DOCUMENT RESUME

ED 388 537 SO 025 102

AUTHOR	Lindquist, Tarry L.; And Others
TITLE	Teaching the Bill of Rights. A Guide for Upper Elementary and Middle School Teachers.
INSTITUTION	University of Puget Sound, Tacoma, WA. Inst. for Citizen Education in the Law.
SPONS AGENCY	Commission on the Bicentennial of the United States Constitution, Washington, DC.
PUB DATE	91
NOTE	312p.; For some related reports from this institute, see SO 025 101-105.
AVAILABLE FROM	University of Puget Sound School of Law, Institute for Citizen Education in the Law, 950 Broadway Plaza, Tacoma, WA 98402-4470.
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01/PC13 Plus Postage.
DESCRIPTORS	*Citizenship Education; Constitutional Law; Elementary Education; Elementary School Teachers; Foreign Countries; Instructional Materials; Intermediate Grades; *Law Related Education; Middle Schools; Secondary School Teachers; *Social Studies; Teaching Guides; Teaching Methods
IDENTIFIERS	*Bill of Rights; Pacific Rim; United States Constitution

ABSTRACT

To celebrate the Bicentennial of the United States Constitution, this curriculum illustrates the concepts of the Constitution and Bill of Rights through events and issues of the Pacific Northwest. The eight units of the curriculum include constitutional visions, the trial of Hershel C. Lyon: an environmental dilemma, comparison of rights around the Pacific Rim, a whole language approach to law and literature, a bibliography, Japanese internment cases, a history of the Bill of Rights, freedom of speech, and self-incrimination. The unit on rights around the Pacific Rim requires students to compare individual rights across cultures and provides information on rights in the United States, Soviet Union, the Philippines, Mexico, Canada and China. For each unit, the curriculum guide explains the sources of the material, the need for resource persons, the number of class periods, a general description, and outcomes. The units include lesson plans which state the objectives, trace the procedures, and present student handouts. The lesson plans endeavor to stimulate student interest through interactive activities such as brainstorming, role plays, mock trials, small groups, and games. (JD)

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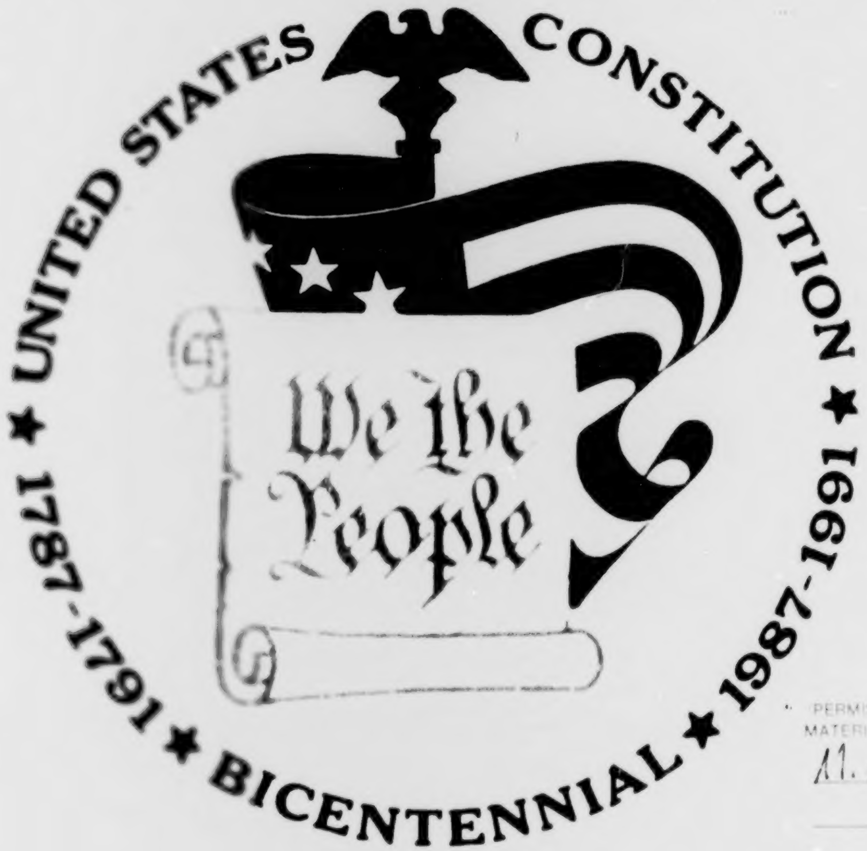
TEACHING THE BILL OF RIGHTS

A Guide for Upper Elementary and Middle School Teachers

A Project of the University of
Puget Sound Institute for
Citizen Education in the Law



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TEACHING THE BILL OF RIGHTS

A GUIDE FOR UPPER ELEMENTARY AND MIDDLE SCHOOL TEACHERS

A Project of the University of Puget Sound School of Law's
Institute for Citizen Education in the Law

Written By:

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FUNDED BY THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION
1991

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TEACHING THE BILL OF RIGHTS

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HISTORY OF THE PROJECT

December 15, 1991 marks the two hundred year anniversary of the ratification of the Bill of Rights, the first ten amendments to the U.S. Constitution. This curriculum was developed to assist upper elementary and middle school teachers lead their students to a thoughtful and in-depth analysis of this document.

The project was funded by the Commission on the Bicentennial of the U.S. Constitution. The Commission, chaired by retired Chief Justice Warren E. Burger of the U.S. Supreme Court (1969-86), was created by Congress in 1983.

Charged with coordinating Bicentennial activities, the Commission embarked on an ambitious five-year plan of education, information and celebration. Chairman Burger called on Americans of all ages to use the 200th anniversary of the Constitution as a "history and civics" lesson, to learn about the history of the Constitution, the people who wrote it, and also what rights and responsibilities Americans have under the Constitution.

The celebration of the Bill of Rights is the final phase of the Bicentennial activities sponsored by the Commission, which will terminate on December 31, 1991.

In the Spring of 1991, the University of Puget Sound School of Law's Institute for Citizen Education in the Law (UPSICEL) was awarded a Bicentennial grant for the development and dissemination of a substantial curriculum on the Bill of Rights for upper elementary and middle school teachers.

The curriculum takes the majestic concepts of the Constitution and Bill of Rights and presents them through events and issues rooted in the experience of those living in the Pacific Northwest. This underscores to young people that the Constitution with its Bill of Rights is a living document that applies to them today.

Tarry Lindquist, the 1990 National Elementary Social Studies Teacher of the Year developed the units with assistance from UPSICEL staff Julia Ann Gold and Margaret Armancas-Fisher. Tarry Lindquist field tested selected lessons in her fifth grade class at Lakeridge Elementary on Mercer Island. Revisions were made before demonstrating the curriculum to teachers from the entire state at UPSICEL's 1991 Summer Institute.

Following this training, teachers will teach the lessons, provide critiques, and return for follow-up training with new teachers at three regional locations around the State in 1992. Teacher leaders identified at the Summer Institute will assist in the teaching and facilitation of these follow-up sessions.

For more information, contact UPSICEL, 950 Broadway Plaza, Tacoma WA 98402-4470, (206) 591-2215.

UNIVERSITY OF PUGET SOUND SCHOOL OF LAW'S INSTITUTE FOR CITIZEN EDUCATION IN THE LAW (UPSICEL)

UPSICEL was created in 1988 to promote law-related education (LRE) in Washington State, as well as in national and international arenas. It built upon the Street Law Course offered at the UPS School of Law that has made LRE a part of Tacoma schools since 1982. The goals of the Institute are to increase awareness of rules that govern everyday behavior, promote values of democracy and understanding of the Constitution, increase effective citizen participation, promote willingness to use legal means to solve disputes, and increase levels of tolerance, fairness and respect for the rights of others.

The Institute has developed LRE curricula in several areas: the Washington Supplement to the national Street Law text, Juvenile Justice in Washington State, Legal Issues for Community Corrections, Cross-Gender Supervision in Prison, and a law school manual Teaching Law Students to Teach. In 1990, UPSICEL cooperated with Mississippi Educational TV to produce videos on the Constitution for use with "at risk" ninth graders. A 1990-91 project is a detailed handbook on how to implement community service learning in LRE.

A major component of UPSICEL's work is conducting teacher training. UPSICEL offers training programs in drug focused LRE, interdisciplinary LRE, detention LRE for juveniles and adults, minority outreach LRE, and corrections and probation officer training.

Since 1988, UPSICEL has served as the state coordinator for LRE on behalf of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

The Institute coordinates LRE activities with the Southern African country of Lesotho. The Institute hosts lawyers and educators from LRE projects in other countries to participate in Washington's LRE efforts. Efforts are underway to establish UPSICEL as a regional center of a newly developing international center for LRE.

The Institute has compiled a comprehensive directory of LRE materials, events and resources for use in Washington, Teaching About the Law: A Law Related Education Directory for Washington State. Under a grant from the Legal Foundation of Washington, this directory will be available in a database format, for use on computers in the fall of 1991.

The Institute is directed by Margaret Armancas-Fisher, an attorney who has worked in LRE full-time on the national level since 1977 and in Washington State since 1982. Julia Ann Gold, an experienced trial attorney with a rich variety of LRE experience, joined UPSICEL in 1989, as Deputy Director.

WHAT IS LAW-RELATED EDUCATION?

According to the Law-Related Education Act of 1978[1] "...the term **law-related education** means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based. Law-related education (LRE) helps students develop the knowledge, skills, understanding, and attitudes necessary to function effectively in a pluralistic, democratic society based on the rule of law.

LRE teaches young people how the legal and political systems function and--most of all--how they fit in. How does the law affect them and how can they affect it? What relevance does the Constitution have in their lives? Why have certain legal procedures been established and how well have they worked in resolving disputes?

LRE is about real issues as they affect real people: little people and big people. At its best, LRE teaches students to reason through hard questions and to grapple with realistic problems. Elementary school children might be asked to puzzle through questions of fairness in the water-fountain line or examine the need for rules in sports and games. Older students might look at the problems of assuring equality in a diverse society or the conflict between rights and responsibilities. The emphasis often may be on applied skills, such as how to read a contract and become a wiser consumer, or may be on such broad skills as analytical thinking, ability to persuade others, and ability to reach decisions after having identified issues and weighed evidence.

Law-related education is active. It teaches because it involves kids. It works because it has them confront--in case studies, roleplays, mock trials, and other active instruction techniques -- the actual dilemmas that citizens must face if they are to make democracy work. In many programs, students meet with lawyers, judges, police, and other community people to see the law in action.

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[1] Statement adapted from the Winter 1983 LRE Project Exchange, "Why Lawyers Must Care About LRE," published by the American Bar Association.

LRE is a proven way of improving younger people's self-image, their attitudes, and their knowledge about law and government. The experience of hundreds of communities, large and small, shows that LRE can make a difference.

HOW TO USE THIS CURRICULUM

These lesson plans provide explicit instructions for teachers and accompanying handouts. However, the lesson plans are intended only as guides. Teachers may decide not to cover every point made nor should the teacher read word-for-word except to give hypotheticals or quote facts as needed. Only the handouts are to be distributed to students. Periodically, background information is provided to teachers to assist in answering student questions.

The estimated teaching time is listed.

The use of outside community resource persons in an interactive manner with students is a critical component of successful LRE. Therefore, suggestions on who may be a useful resource for the classroom are indicated for every unit.

Next, the lesson plan lists the specific learning objectives for each lesson. Any materials needed for the course are identified, including the accompanying Handouts. Sometimes the lesson plan requires the teacher to take some action prior to the class, for example, cutting up a xerox of one of the handouts and posting them around the classroom.

Next, the procedures are laid out. Answers are provided in this section to the questions and activities presented in the Handouts.

Handouts are identified by lesson number and then name or handout number. Teachers will need to reproduce the Handouts prior to class in sufficient number for students. The original should be kept clean and returned to the three-ring binder for subsequent use. The teacher should be careful to identify all the pages to each Handout since many Handouts have more than one page.

Included throughout the lesson plans are suggested interactive teaching strategies designed to encourage student participation and cooperation in the classroom. A maximum of student involvement has been found to be most successful in using this type of curriculum. The various methods included in the curriculum are briefly described below. They are merely included as a refresher and an indication of how they fit into this curriculum.

Brainstorming

This method calls for the students to come up with a list of responses to a question posed by the teacher. It is usually best to write these responses on the board as students answer and, after the class' suggestions are exhausted, to add any overlooked answers and then discuss them in more detail.

Hypotheticals and Case Studies

This method presents a statement of fact and requires the application of some aspect of the law to these facts. While the "answer" to the problem is important, the greater value lies in using questions and other discussion techniques to bring out arguments and considerations on all sides of the issues. Suggested steps to take in discussing a hypothetical or case study follow.

a. Have the teacher, or a student who is a good reader, read the hypothetical aloud.
b. Ask other students to list the key factors in the case (write on the board).
c. Ask what the issues are in the specific case. Ask students to state each issue as a question.
d. Ask students to give arguments on both sides of the issues. Discuss and try to remain unbiased.
e. Ask the students what they thought the decision was in the real case. Tell them what the decision was and the reasons for it. Ask if this was the correct decision. Why or why not?
f. What was the significance of the decision? What reasoning did the court use to arrive at the decision? Did it set a precedent for the future? Is it likely to be changed in the future?

Role plays and Simulations/Mock Trials

Mock trials are simulations of actual courtroom activities. The activities are designed to focus student interest on a particular law or procedure while allowing them the opportunity to learn about important issues and demonstrate the knowledge they have acquired. In the Herschel mock trial, for example, students learn about the conflict between the sea lions and salmon, and the consequences of man's alterations to the salmon's native habitat. These activities also allow students to gain different perspectives by observing the role of another.

There are three stages of development in any role play: preparation, enactment, and debriefing. The preparation stage involves assignment of roles, explanation of the process and preparation time for the players to learn their roles. Roles are provided for the entire class to participate, students without specific roles can serve as observers who must write decisions.

Teachers should play a low-key or even invisible role during the enactment of the mock trial. In certain instances, where the activity has gone way off track or part of it is taking too long, it may be appropriate for the teacher to step in and make suggestions or ask questions.

The most important of these stages is the debriefing, which should use questioning to raise questions such as: What were the key issues raised in the hearing? What is the law or principle that was involved here? Were the participants realistic and effective in their roles? Could they have performed their roles differently? Were there arguments not made that you would have made? How would you have decided the case? Was the proceeding fair?

Small Groups

Small group work is essential in all of the lessons in this curriculum. Small groups are a very effective tool for promoting cooperative learning and student interaction. Research has shown that having students work in groups of from two to five on specifically directed tasks can be a very successful educational technique. There are a variety of roles that can be assigned to the group: recorder, reporter and others. To ensure that each member of the group contributes, each student can be required to provide one idea.

Groups should be instructed in the amount of time available for their work and instructions clarified with an example before the groups start.

Jigsaw, mentioned several times throughout the lessons, is a method of configuring groups. In the jigsaw method, students who have been working in small groups form new groups, with one member from each of the "old" groups represented in each new group. That way, each new group has the benefit of the perspective and discussion of all of the former groups. In the Constitutional Visions unit, for example, at one point, members of the space community groups leave their "communities," and form new groups, with each new group consisting of one member from every space community.

Games

Games capitalize on students' desire to have fun and to compete. It is crucial that the rules of the game be explained to everyone's understanding and that the rules are not changed during the game.

Visual Aids

Pictures and charts are also useful ways to present information.

Opinion Poll

An opinion poll is a strategy that allows students to express their opinions on the topic of study. Typically, a poll allows for a spread of opinions (agree, undecided, disagree). An opinion poll can serve as a springboard for classroom discussion, give the teacher feedback on student values, be used to assess changes in students' attitudes following instruction and lay the foundation for how the law in fact applies to the situation described.

To conduct an opinion poll, the teacher should have each student privately express his or her opinion (for example, by writing the appropriate response on the student handout). The teacher should then develop a class composite. This can be done by a simple show of hands, by having students move to align themselves under a banner agreeing with their position, or other creative ways. Finally, students should be asked to identify their opinions and list opposing points of view.

The instructor can use various poll items dealing with the same principle to check the consistency of student beliefs. Afterwards, the teacher should then present information as to the state of the law in Washington on the items in the poll. It is important that teachers recognize that varying shades of opinions are legitimate, even when opinions differ from the law or the teacher's own views. Students, however, are expected to give reasons for their opinions. It is useful to use the opinion poll as a demonstration of the legislative process which evaluates various values and designs statutes based on the majority's values.

Questioning

Questioning is used in this material to 1) check for student understanding, 2) solicit student opinions on controversial issues, 3) teach higher level thinking skills, and 4) lead students to an answer the teacher desires. In each case, teachers should try to equalize wait time (that is, the time given to students to respond to a particular question). It is also desirable to promote student-to-student questioning and discussion where appropriate.

Lecture

This method should be limited as much as possible since great use of lecturing will be of negative value. However, there are times when certain points may be made most appropriately by lecture. It is important to give examples, ask questions and brainstorm during a lecture.

Evaluation

Teachers should use a variety of methods to check frequently for student understanding. Question and answer techniques and short hypotheticals are useful to measure class progress and understanding. The lesson objectives are useful guides to writing questions for review.

Resource Persons

The characteristic of law-related education that has the greatest potential for having a positive impact on students' behavior is the appropriate use of outside resource persons. Using lawyers, courtroom personnel, judges, police, state inspectors, social workers, and other key resource persons in the classroom is important.

In the first page of each unit, suggestions are made as to possible resources persons and their role in the class.

When contacting resources, it is extremely important to inform them of the goals and objectives of the class and to review briefly the classes that come before and that will follow in order to allow for continuity. Share a copy of the lesson with the resource person, who may devise a way to interact successfully with the students.

UNIT ONE - CONSTITUTIONAL VISIONS

SOURCE:

University of Puget Sound Institute for Citizen Education in the Law (UPSICEL) and Tarry L. Lindquist. Revised from an earlier unit, *Constitutional Visions*, by Lindquist.

USE OF OUTSIDE RESOURCES: Lawyers, judges or legislators could make presentations on Earthkind's government structure.

CLASS PERIODS: 10-12

DESCRIPTION:

A cultural exploration of space for the intermediate grades (4-8) using a multidisciplinary approach to integrate higher order thinking skills and analysis of the Constitution and the Bill of Rights into the regular school day.

OVERALL OUTCOMES:

This unit blends Social Studies, Language Arts and Reading, Science, and Art with practice in critical and creative thinking. Cooperation and compromise are essential to the unit's success in the classroom, just as they were for the authors of the Constitution of the United States of America. Teachers will discover that the integration of content areas facilitates finding the blocks of time needed to teach the unit, while the extension activities provide concrete ideas for individual student exploration and enrichment.

Social Studies Outcomes:

1. The students generalize how environment influences culture.

2. The students recognize the value of cultural pluralism.

3. The students list characteristics of government.

4. The students recognize that different societies have different cultures.

5. The students identify how every culture has its own values.

6. The students recognize that people meet their basic needs in different ways.

7. The students develop concepts regarding living in space.

8. The students generalize about cultural data and its relationship to physical geography.
9. The students determine qualities of a good government.
10. The students analyze the United States Constitution.
11. The students write a Bill of Rights for a space colony one hundred years in the future.
12. The students choose to work cooperatively to achieve a common goal.

Language Arts and Reading Outcomes:

1. The students develop a logical sequence of ideas from a given situation.
2. The students list positive and negative attributes.
3. The students write fantasies based on assumptions.
4. The students organize data.
5. The students write brief descriptive paragraphs.
6. The students practice group discussion skills.
7. The students read and analyze the Constitution and Bill of Rights.
8. The students make presentations of conceptual data.

Science Outcomes:

1. The students demonstrate an understanding of the concept of adaptation.
2. The students develop a hypothetical ecosystem and describe how the parts interact.
3. The students relate the impact of environment on people.
4. The students describe ways to use and conserve limited resources.
5. The students discuss the implications of prolonged living in space.
6. The students develop a concept of living in space.

7. The students become aware of the potential for prolonged life in space.

8. The students apply facts about living in space with the context of creating their own space communities.

Art Outcomes:

1. The students use a variety of lines in both abstract and realistic works.

2. The students create designs using foreground and background.

3. The students create two and three dimensional work.

4. The students express their notions of space through artistic mediums.

5. The students enjoy participating in a cooperative art project.

Higher Order Thinking Skills Outcomes:

1. The students practice independent decision-making.

2. The students practice group decision-making.

3. The students define and practice consensus.

4. The students solve problems related to life in space.

5. The students choose logical solutions from a series of options.

6. The students evaluate consequences.

7. The students develop lists of positive and negative implications of solutions.

8. The students learn there are no wrong answers when dealing with judgments and suppositions.

9. The students experience the joy of cooperatively and creatively solving common problems.

TEACHERS' BOOKSHELF: SPACE COLONIES AND FLIGHT

Air Education Manager, *Flight Teaching Manual*, Aircraft Marketing Division, Cessna Aircraft Company, P O Box 1521, Wichita, KS 67201 (Best $5.00 buy in town!) A video for $10 is also available.

Dye, Aimee, *Aviation Curriculum Guide for Middle School Level, Secondary School Level*, Office of Public Affairs, FAA Education Program, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC 20591. *Aviation Science Activities for Elementary Grades*, same as above.

Feldman, Anthony, *Space*.

Furniss, Tim, *Our Future in Space*.

Knight, David D., *Colonies in Orbit: The Coming Age of Human Settlements in Space*.

Knowledge Unlimited, Inc., "Colonies in Space," filmstrip with a script, P O Box 52, Madison WI 53701, 1-800-536-2303.

NASA, Teacher's Aerospace Workshop Resource Book, *The Sky as Your Classroom*, NASA/AESP, Johnson Space Center, AP4, Houston, TX 77058, (723) 483-4433.

Ride, Sally, *To Space and Back*.

Robinson, George S., *Living in Outer Space*, and Essay, *Re-Examining Our Constitutional Heritage*, High Technology Law Journal, Vol 3:33 (1989).

Stine, G.Harry, *Handbook for Space Colonists*.

READ ALOUDS AND READ ALONES: SPACE COLONIES AND FLIGHT

Boyne, Walter J., *The Smithsonian Book of Flight for Young People*.

Eco, Uberto and Eugenio Carmi, *The Three Astronauts* (picture book).

Key, Alexander, *The Forgotten Door*.

Lauber, Patricia, *Lost Star: The Story of Amelia Earhart*.

Phleger, Marjorie, *Pilot Down, Presumed Dead*.

Sabin, Francene, *Amelia Earhart, Adventure in the Sky*.

Sloate, Susan, *Amelia Earhart, Challenging the Skies*.

Sobol, Donald, *The Wright Brothers at Kitty Hawk*.

Stine, *Handbook for Space Colonists*.

Yep, Laurence, *Dragonwings*.

LESSON 1

OBJECTIVES:

1. Given a set of assumptions, students will independently describe a space colony one hundred years in the future.

2. Students will organize data.

3. Students will practice guided fantasy.

4. Students will formulate their ideas about their personal space colonies, and express them in a descriptive paragraph.

MATERIALS:

*ASSUMPTIONS, teacher reference information
*Handout 1
*Guided Fantasy prompt page

PRIOR TO LESSON:

1. Make copies of student reading, FACTS ABOUT SPACE COLONIES, Handout 1.

2. Read ASSUMPTIONS for your own information and reference.

3. Review Guided Fantasy prompt page.

PROCEDURES:

4. Pass out copies of student reading, Handout 1, FACTS ABOUT SPACE COLONIES. Pair students, then assign one numbered paragraph for each pair to study and report on to the rest of the class.

5. Ask students to share their reports from the student reading with the rest of the class.

6. Prepare students for a "guided fantasy" experience. If this is your students' first guided fantasy experience, explain that this is one way to stimulate imagination and creativity. Ask them to listen closely while you read to them. They will need to cooperate and trust you.

7. Darken the room.

8. Guide your students in the visualization of their own personal space colonies by slowly reading the guided fantasy prompt page.

9. Turn on lights.

10. Ask students to write a paragraph about what "they saw." At this time, you may want to share information from the ASSUMPTIONS reference page, but it is not essential. Student imaginations should be ignited at this point. However, the ASSUMPTIONS may be helpful if you find your students are merely reproducing reruns of Star Trek.

EXTENSION: To integrate Language Arts and Art, tell the students to create post cards that were purchased and mailed from their space colony. Give students a 4" X 6" piece of lined paper and the same size piece of tag board. Have students write a message on the lined paper, then draw a picture related to their vision on the tag board and glue them together. Pass them around for others to enjoy or put on a ring and make a quick class book.

LESSON 1

ASSUMPTIONS (For Teacher Reference)

SPACE COLONY CULTURES AND ENVIRONMENTS WILL BE DISTINCTLY DIFFERENT FROM THOSE ON EARTH. ALTHOUGH SPACE COLONIES WILL INITIALLY BE CREATED AND INHABITED BY EARTH-ORIENTED INDIVIDUALS (EARTHKIND), THE BODIES OF THE INDIVIDUALS LIVING IN SPACE COLONIES (SPACEKIND) WILL BE GREATLY AFFECTED BY PHYSICAL CHANGES THAT OCCUR BECAUSE OF THEIR DEPENDENCE ON LIFE SUPPORT SYSTEMS AND THE ALIEN PHYSICAL CHARACTERISTICS OF SPACE.

"IN SHORT, EMPIRICAL REASONS EXIST FOR BELIEVING THAT SPACE INHABITANTS WILL THINK DIFFERENTLY, TOUCH DIFFERENTLY, TASTE DIFFERENTLY, PERCEIVE DIFFERENTLY, EVALUATE DIFFERENTLY, AND REACT DIFFERENTLY FROM THEIR EARTHBOUND COUNTERPARTS."[1]

Data to support these assumptions:

1. Due to weightlessness, Spacekind will have a decrease in red blood cells because of less oxygen and an overload of carbon dioxide.

2. As zero gravity causes a movement of body fluid to the head, Spacekind may experience dizziness and drowsiness in physical and intellectual reactions.

3. Weightlessness will disturb "whole body thinking," which psychologists feel affects value-forming and judgments.

4. Gas mixtures in space will cause light to bend differently in space than on earth, affecting the way Spacekind "see," impacting such earthbound judicial proceedings as the "eyewitness account."

5. Living in a totally artificial environment will result in a lack of vitamin D, which is needed for strong bones, development of immunities, and helps the body meet the changing demands of the environment with a minimum of mind and body trauma.

6. In a space colony food will be a critical and limited resource:
    a. There will need to be careful consideration for the body's needs in a nearly closed ecosystem.

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[1] Ideas for the assumptions are from Robinson, George S., *Astronauts and a Unique Jurisprudence: A Treaty for Spacekind*, 7 Hastings International and Comparative Law Review, Spring 1984.

b. There will be little opportunity to get supplies from outside.
c. The preparation and rituals associated with food will be important to the society because of isolation and lack of other sensory stimulations.

7. The trend toward multicultural crews of both sexes is expected to continue and probably reflects future populations of space colonies.

8. High density populations will be commonplace because establishing a permanent colony in space will be so expensive.

9. One of the major problems will be to minimize boredom as few options for recreational activities exist.

10. Earthkind must be willing to allow Spacekind to develop their own social order so they can evolve their own values peculiar to life in space.

Bill of Rights

LESSON 1

FACTS ABOUT COLONIES IN SPACE[1]

1. People and objects seem to float in space since there is so little gravity. This "weightlessness" is one of the reasons many scientists support building colonies in space. Workers in space can build huge structures much more easily than on earth because they don't have to overcome the forces of gravity.

2. Why not build colonies on existing planets? Venus and Mars lack some resources humans need. Mars has no atmosphere and Venus's surface is too hot for humans to survive.

3. Why not build colonies on the moon? While small size mining operations may be built on the moon, it is not the best site for large scale colonization. One reason is the cost to get supplies from the earth to the moon would be much more expensive than a space colony. Secondly, because of the moon's gravity, some of the same problems of building on earth are also true on the moon. Finally, the moon has two-week nights. These long periods of darkness would require expensive energy sources.

4. The moon's surface has a wealth of natural resources: aluminum and titanium to provide lightweight but very strong building materials, oxygen for water and for breathing, and silicon, a basic element in glassmaking. Mining the moon for resources to build space colonies would be inexpensive and efficient.

5. Our solar system is not dark, but full of sunlight. Energy from the sun can provide space colonies with endless cheap energy. Space stations could turn solar energy into power for electricity. Mirrors could be placed to concentrate sunlight for manufacturing.

6. If you consider sunlight, weightlessness, and moon mining, the most reasonable place to build the first space colony would be where gravity would not pull it out of place. Placing a colony in a stable orbit around the moon or sun, placed far enough away to avoid losing sunlight from an eclipse of the sun seems best.

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[1] Information for this reading extrapolated from a filmstrip and teacher's guide, Colonies in Space: The Frontier Beyond Earth, John Laedlein and the staff of Visual Education Consultants, Inc., VEC, Inc., 1980 (ISBN 0-86652-001-S LC# 80-730788).

7. A scientist from 200 years ago named Joseph Louis LaGrange identified certain spots in space that he thought were stable. He said if an object were placed in one of these spots, it would remain there forever. These points are named L-1 through L-5. Only two points, L-4 and L-5, would really do for space colonization. Both points are located where the gravity of the sun, earth and moon cancel each other out.

8. Scientists believe that at least 10,000 people would have to live in the first space colony to make the colony economically successful. Crops, manufacturing, and recreation areas could be created for the people to live and work in for the rest of their lives.

9. NASA has done extensive testing on weightlessness for human beings. Extended weightlessness has bad effects on the bones, muscles, and blood. Centrifugal force, that force that seems to push you away from the center when you are riding a carnival ride that whirs around in a circle, could be used to help colonists create a kind of gravity similar to earth's in their living areas. Habitats, or living areas, could rotate about two times a minute to simulate earth's gravity.

10. Nitrogen, hydrogen, carbon, certain machines and equipment, medical supplies, and seeds for crops are all the colonists will need from earth. Combined with mining the moon, colonists will be able to create an earth-like environment with lakes, fields, hills, and valleys if they choose.

11. The perfect mix of sunlight and moisture could be created to allow the colonists to grow a large amount of food in a small amount of space. Soybeans, wheat, rice, and other crops as well as chickens, turkeys, and fish could be grown to provide a varied diet for colonists.

12. Special laboratories could be built for experimenting, using the qualities of space that are difficult to achieve on earth, such as the lack of gravity, extremely high and/or low temperatures, and strong radiation from the sun. Space also provides an almost perfect vacuum, a condition which is very expensive and very hard to duplicate on earth.

13. Space colonists could build huge solar reflectors to beam the sun's energy down to earth, eliminating the need for other energy sources that pollute earth's atmosphere and providing abundant, inexpensive energy. These reflectors would provide the colonists with important income to continue enriching their life in space.

14. After the technology of building space colonies is perfected, larger settlements would be possible. Scientists have already sketched plans for colonies of 10 million or more people. These colonies would be able to absorb the ever increasing populations on earth.

15. In the future of space colonization, mining could extend to the two moons of Mars, the moons of Jupiter and Saturn, and an asteroid belt located between the orbits of Mars and Jupiter. Carbon, nitrogen, and hydrogen, resources the first colonists had to bring from earth, are found in rich deposits in the asteroid belt.

16. There may someday come a time when human beings won't be able to imagine not living in space. They may look upon earth as "old fashioned" and may visit it like a museum, to trace their ancestors and to explore the history and culture of the early life of the human race.

LESSON 1

GUIDED FANTASY PROMPT PAGE (For Teacher Reference)

Read slowly and deliberately. Pause frequently to allow the students time to visualize. Use a quiet, relaxing intonation as you read. Pause after asking each question to give students time to formulate their fantasy.

Close your eyes. Relax. Take a deep breath and let it out s-l-o-w-l-y. Come with me on an adventure. Climb into my space shuttle. It's warm and safe. You know nothing can harm you in this marvelous vehicle!

As we strap in, say farewell and leave earthkind behind. Without any feeling of movement at all, you notice that we are soaring through the atmosphere, heading for deep space. Our target, L-4.

It only seems like a moment and you've arrived! You feel as if you've come home. You recognize this place.

Slowly, you familiarize yourself once again with your home in space. You are aware of the slight pull of centrifugal force as the spinning colony balances the lack of gravity. You know that you have landed at the habitat. You recall when this was just a young pioneering colony.

Remember when you and your friends argued over the size of the colony? How big is it? What are some of the natural resources and features of this colony? Is the climate what you remembered?

Notice the citizens here call themselves Spacekind. What do they wear? How do they look?

Let's go into the center of the city. What kind of transportation do we use? Did you notice what Spacekind live in? Look at all the Spacekind. What kind of work do they do? Have you seen any children?

It's time for us to return to the shuttle. Now that you have been here, you'll be able to return any time you like.

Here we are, back on earth. Slowly open your eyes when you are ready. Welcome back.

LESSON 2

OBJECTIVES:

1. The students will share guided fantasies through their descriptive paragraphs.

2. The students analyze data and develop data discs for a class space colony.

MATERIALS:

*Blank general data disc for each group (Handout 1)
*Lots of scrap paper for notes

PRIOR TO LESSON:

1. Run copies of the general data disc blank, 1 per cooperative group.

PROCEDURES:

2. Recall the fantasy of the previous class. Divide students into cooperative groups[1] and ask each student to read their descriptive paragraphs to the rest of the group.

3. When sharing is completed, tell students they will now begin the exciting task of creating a class space colony!

4. Pass out one data disc blank to each group. Explain to the students that each group will create an independent space community. Later, the communities will join together to make a colony.

5. Tell students their group task is to fill FIVE of the sections today, (all except Form of Government) describing the group's space community. Either display the Description of Data Disc Sections - Handout 2 on the overhead, or pass out one copy to each group. Review the categories to be filled in and the information about each in Handout 2. Encourage the groups to build on each other's ideas from their descriptive paragraphs.

6. Demonstrate POOL AND PICK as a preliminary brainstorm and decision-making technique. Pool and Pick helps students practice the principles of brainstorming and reaching group decisions by minimizing frustrations and ensuring equity.

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[1] These small groups of 3 to 6 students will be working together intensely for the next ten days. You may want to carefully place students, noting individual strengths and grouping students who can work together.

Start with this strategy and by the end of the ten day unit, most groups will have moved comfortably into a less formalized process.

POOL: Begin with the section: Size and Physical Features. Have the students, working in their cooperative groups, "pool" their ideas by individually writing down on pieces of paper all their suggestions for that particular section. Share with each other. Leave notes in a "pool."

Move to the next section: Climate. Repeat process. Be sure each student writes down his/her ideas. Tell students that if it is not on paper, the idea can't be considered. Leave in a second "pool."

Continue on with Natural Resources, Population, and Chief Products. Encourage groups to refer to the overhead or Handout 2 describing each section as they progress. Check to see if anyone wants to add to any pool.

When there are five "pools," picking can begin.

PICK: First, have each cooperative group begin with the student whose name begins with the letter closest to the beginning of the alphabet. Move around the group clockwise. The first student picks one idea that she/he likes for one of the sections and writes it on the disc. The next student picks any he/she likes and writes it on the disc. The rotation continues until each group member has a turn.

Then a second rotation begins, this time with the second student beginning the cycle.

On the third rotation, the third student begins. If a student has a "brainstorm," he/she may add it to the pool at the end of each rotation. This encourages "piggybacking" on other's ideas.

Continue rotations (usually 5-7 is sufficient) until the group is satisfied they have the foundation for a space community that reflects their diversity and creativity. .

7. Using POOL AND PICK, ask students to fill in every section but one. (Do not fill in FORM OF GOVERNMENT section. This will be completed in Lesson 7.)

8. Review with the groups individually the information they have agreed upon. Check to make sure they have indeed created a group vision of a space community.

9. Instruct groups to choose a name for their community by the next lesson. If possible, designate an area of the bulletin board for each space community. This will be a "repository" to display their discs and other work.

EXTENSION: Develop and extend mapping skills by telling the students to draw a map of their community. Encourage the use of symbols on a legend to indicate physical features, natural resources, chief products or population. Integrate Language Arts through an assignment which requires students to develop a coded language using only geometric shapes or numbers. You might ask the students to write a weather report for the colony. Tell them to be prepared to read it in class as if the student were a broadcaster on the local TV station.

Bill of Rights

LESSON 2

DESCRIPTIONS OF DATA DISC SECTIONS

SIZE/PHYSICAL FEATURES

How big? Think about the number of people who will to live in your community. Give the size in miles, meters, or give a well known reference, for example, "the size of Seattle."

Physical features include lakes, mountains, waterfalls, deserts, plains, hills, rivers, and islands. Create the habitat you would like to live in for a lifetime.

CLIMATE

How hot does it get in your community? How cold?

Does the wind blow? How hard?

How much rainfall do you have per year? Snow?

Is your climate tropical, temperate, arid or arctic?

Decide on your climate and write it down.

"EXTRA"-NATURAL RESOURCES

The resources aren't really natural because humans would have put them there. After a time, however, it would seem as if they'd always been there.

Think of trees, water, precious metals like gold and silver, mineral resources like copper, aluminum, and iron.

Consider the land, forests, mines, water and energy of your colony.

POPULATION

Scientists predict that the smallest population needed for a space colony is 10,000 people. Designs have already been created for space colonies of up to ten million people.

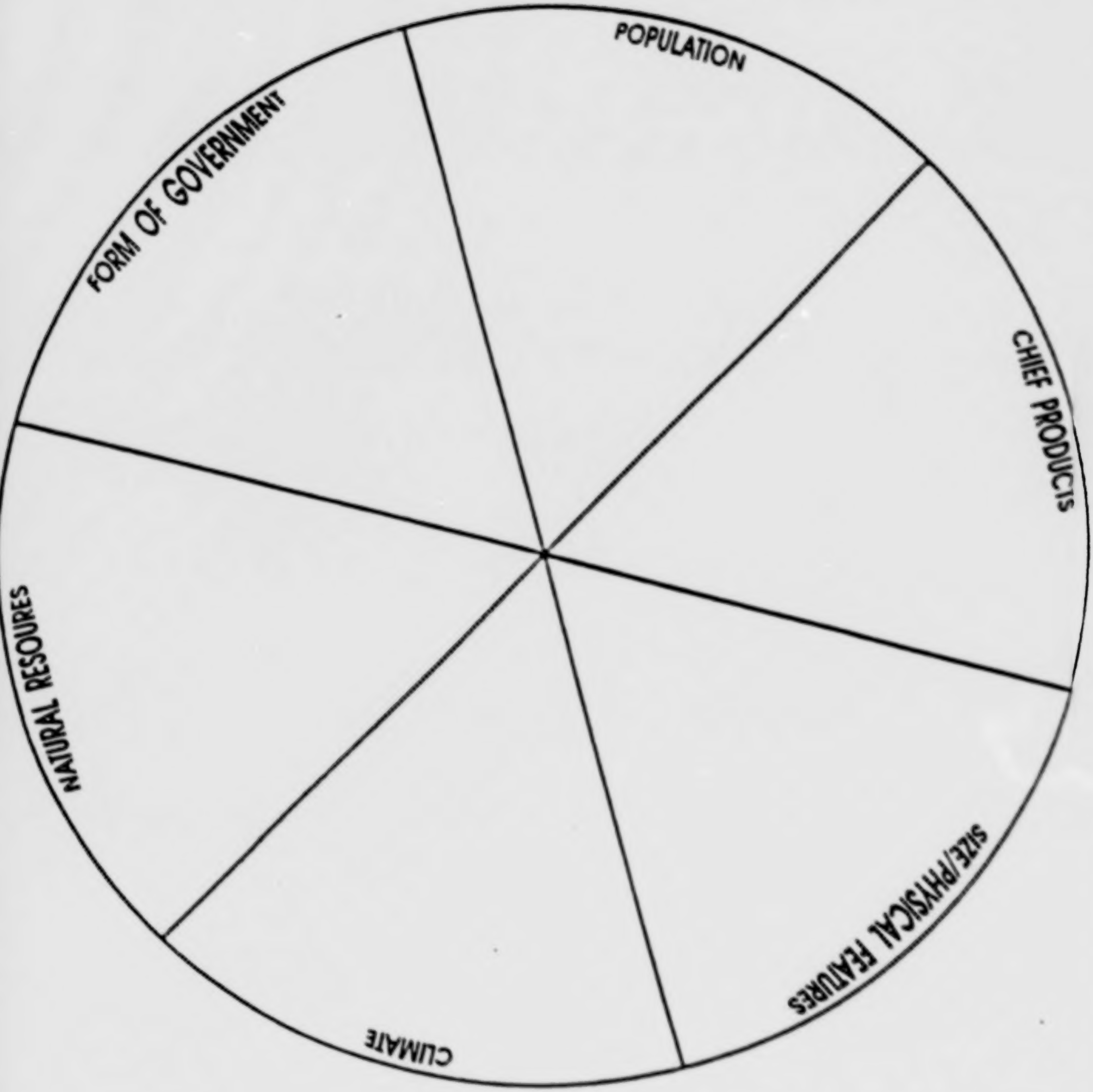
Think of the size of your community and agree on a population that fits.

CHIEF PRODUCTS

What is produced in your community to sell, trade, or use? While you may have many products, select the main ones to list on your disc. Consider your natural resources, climate, and physical features as you make these choices.

Remember, your chief products affect the work people do in your community.

UPSICEL Unit One, Lesson 2
General Data Disc


FORM OF GOVERNMENT
POPULATION
CHIEF PRODUCTS
SIZE/PHYSICAL FEATURES
CLIMATE
NATURAL RESOURES

LESSON 3

OBJECTIVES:

1. Students will develop cultural data discs.
2. Students will make generalizations about relationships between the general data and cultural data discs.
3. Students will create housing for their space community.

MATERIALS:

*Construction paper, drawing supplies
*Brads (paper fasteners)
*Scissors
*Cultural data disc blanks for each group

PRIOR TO THE LESSON:

1. Copy a cultural data disc for each group.

PROCEDURES:

2. Pass out cultural data discs to the groups. As one student cuts out the disc, display a model on the overhead. Point out to the students that environment often shapes culture. Hand out brads and ask the groups to connect the two discs at the center point, the small one on top of the larger.

3. Rotate the larger disc so the groups can see how the NATURAL RESOURCES section on the General disc could influence cultural activities of housing, food, clothing, and traditions. Ask students for specific examples of how these can influence each other.

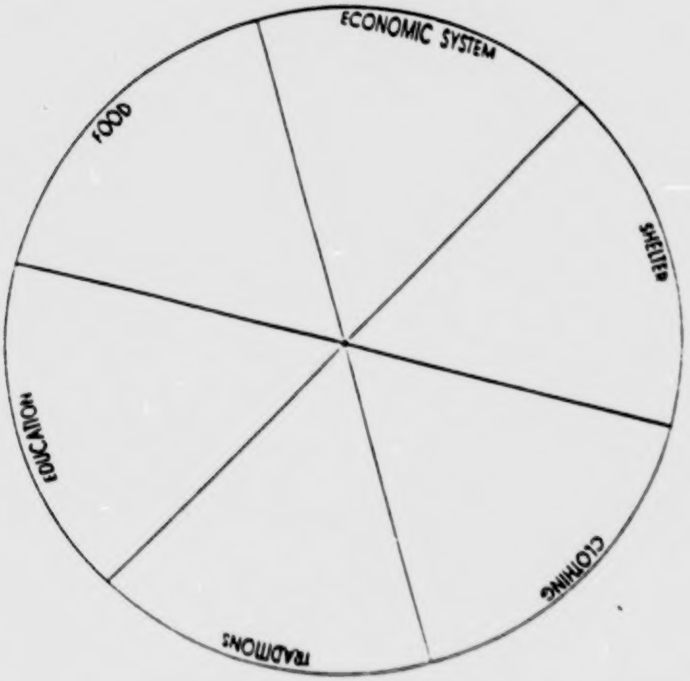
> For example, the availability of natural resources will affect the economy, since if they have precious metals, their economy will be stronger.

4. Rotate the disc again, this time focusing on how CLIMATE affects cultural activities. Elicit examples from students (i.e., South Pacific cultures use palm leaves for shelter and clothing. Inuits in Alaska use hide and fur.) Ask students for more examples of how climate can affect the cultural disc.

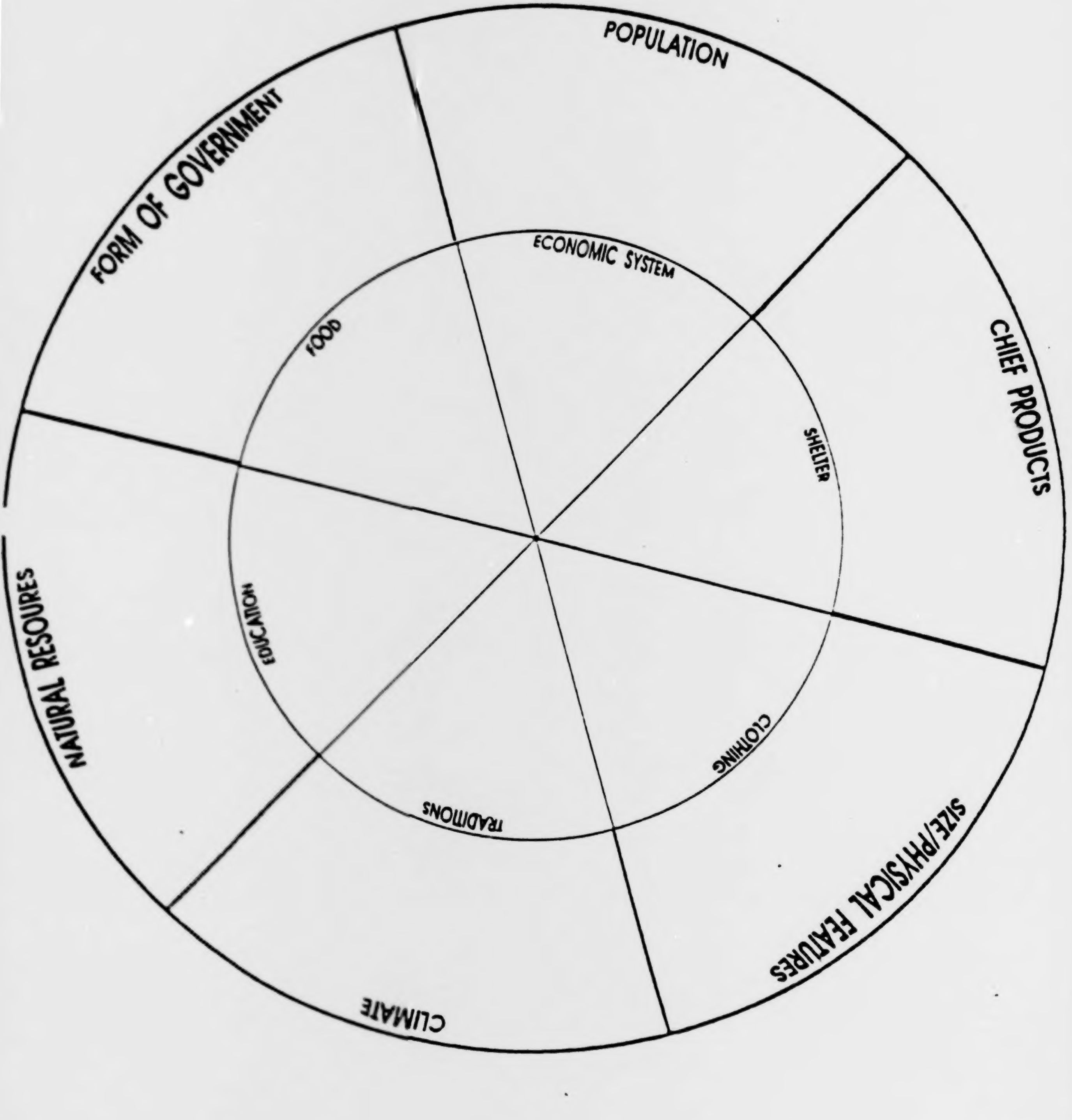
5. Discover as many relationships as you can, recording students' suggestions on the board or overhead.

6. Bring the focus to SHELTER. Discuss with the students that one of "earthkind's" primary needs is that of shelter. We can assume it will also be very important to "spacekind" as well. Keeping in mind their community's climate, natural resources, size, physical features, population and chief products, each student should design appropriate housing as if he/she were going to live in it. Designs should be in color, carefully drawn, and labeled where necessary. Drawings should be displayed in the "repository."

EXTENSION: To integrate art and creative thinking, suggest students make a three dimensional model of their housing using common objects and supplies found at home or school. Suggest students design transportation for their community or shuttles for traveling between earth and their space community.


ECONOMIC SYSTEM
SHELTER
CLOTHING
TRADITIONS
EDUCATION
FOOD

Sample--General and Cultural Data Disc Configuration


POPULATION
CHIEF PRODUCTS
SIZE/PHYSICAL FEATURES
CLIMATE
NATURAL RESOURES
FORM OF GOVERNMENT
ECONOMIC SYSTEM
SHELTER
CLOTHING
TRADITIONS
EDUCATION
FOOD

LESSON 4

OBJECTIVES:

1. Students will create a "Celestial Snack" for their space community.

2. Student will demonstrate an understanding of the relationship between environment and food.

3. Students will replicate a recipe format.

MATERIALS:

*Sample recipe
*Announcement (optional)
*Delphi Technique

PRIOR TO LESSON:

1. Run copies of the Sample Recipe for each student. Student copies of Announcement are needed if you choose to do this extension activity.

2. Review ASSUMPTIONS, item 6 regarding food (Lesson 1)

PROCEDURES:

3. Tell the students that as Spacekind travels to different galaxies they sometimes get homesick. What kinds of things do students take with them on trips to keep from getting homesick? Sometimes it's a favorite snack. Discuss nutrition in space. Emphasize the social implications of food in a synthetic and alien environment.

4. Review factors influencing food in each space community by referring to the data discs, e.g. climate, physical features.

5. List some conditions that would have to be considered in the creation of a CELESTIAL SNACK. (lightweight, travels well, easily packaged, plentiful raw materials, easily manufactured, popular, nutritious.)

6. Distribute Sample Recipe to each student.

7. Discuss the format and structure of the recipe. Set standards for what must appear in their recipes: i.e., ingredients, amounts used, procedure, cooking temperature, quantity.

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8. Ask students to create a CELESTIAL SNACK. This can be in groups or individual work. Note that judging criteria will be on taste only.

NOTE: This assignment works best when assigned on a Friday and due on a Tuesday. It gives students and their parents time to organize. Encouraging students to really explore the possibilities for food in space by exploring their own kitchens makes this a great kinesthetic activity. Not all students have to bring in a sample. They can simply bring in a recipe. Alerting parents a week before the assignment is due improves the quality of the assignment. However, teachers can turn it into a creative writing assignment, using the recipe format.

EXTENSION: Have a cooking contest. Pass out the Announcement. Those students who wish to participate may bring in their snacks for judging. When judging, use the Delphi Technique (follows lesson).

CELESTIAL SNACK COOKING CONTEST

EVERY SPACE COLONY NEEDS AT LEAST ONE FAVORITE SNACK FOOD.

**Consider your resources and environment

**Think about your lifestyle

**Create a perfect snack for your colony

***Give your snack an appropriate name

***Bring a large enough sample so we can judge the best

****Be sure to clean the kitchen when you're done!

****You may work alone or work in a group

*****Contest is open to all citizens of space communities

"The more snacks, the more we eat!!!"--Old Celestial saying

LESSON 4

DELPHI TECHNIQUE

1. Randomly number the snacks in sequential order.

2. List the snacks by name in sequential order on a piece of lined paper.

3. Taste the snacks.

4. Each student individually evaluates the snacks. The best liked snack receives 25 points. The second best should receive 20. Third should be given 15. Fourth 10 points. Fifth, 5 points. (Teachers can adjust this point system, perhaps to reflect current math emphasis such as decimals or percentages. More than five items can receive points if it is desired that most or all items receive at least a few points.)

5. Groups tally their points.

6. Groups report their point totals to the teacher who writes them on the board.

7. Class tallies total points. The snack with the most points wins the CELESTIAL SNACK AWARD for the space colony.

Bill of Rights

LESSON 4, SAMPLE RECIPE

SPACEBALLS

1 6 oz. package (1 cup) semisweet chocolate pieces

1/3 Cup evaporated milk

* * * * * * * * * *

1 Cup sifted powdered sugar

1/3 Cup chopped walnuts

* * * * * * * * * *

1 3.5 ounce can flaked coconut

Combine chocolate and milk in a double boiler; heat over hot water until chocolate melts, stirring to blend. Remove from heat; stir in powdered sugar and nuts.

Cool slightly, then form in 1-inch balls, roll in coconut. Makes about 24.

****

Taken from Better Homes and Gardens New Cookbook, Meredith Publishing Company

****

COMMENT: This recipe would be good for our space community for four reasons:
A. It calls for only a few ingredients.
B. It makes several servings.
C. It has a good name!
D. It tastes great!

LESSON 5

OBJECTIVES:

1. Using the jigsaw technique, the students will work cooperatively in groups to develop one of the following for the space colony: Sport, Money, Flag and Motto, Education, Anthem, Holiday, and Mascot.

2. The students will complete and present a chart describing their ideas to the whole class.

MATERIALS:

*Data discs
*8 large pieces of tagboard or poster paper with headings already labeled (one for each heading)
*Assorted art materials, including large markers

PRIOR TO LESSON:

1. Label each of eight tagboard charts using one heading per tagboard (a different heading for each). Headings are listed on the Teacher Reference Chart Headings.

PROCEDURES:

2. Tell the students today will be busy and fun. The task will be to fill in those areas on their Cultural Data Discs that are still blank as well as to expand our "knowledge" of our newly formed space colony.

3. Divide students by using the jigsaw technique from cooperative learning groups strategies: Each student leaves his/her space community and joins a new group made up of representatives from all the other groups to consolidate the communities into a colony of diverse yet united communities. Three to six students in a group work best for this activity. There should be 7 groups. (An easy way to do this is to have students count off from 1-7, and all "1's" form a group, etc.)

4. Hand out one chart (with its one heading) to each group. Instruct students to share ideas and come to agreement on their heading. Ask them to fill in the chart to share with others at the end of the period.

5. Provide ample work time. Some groups will need prompting to get going. Circulate around the room, and encourage the groups as they are working.

6. When all the charts are completed, provide time for each group to share their chart. If there is time, have all the groups learn the anthem, make some money, discuss or play the sport, make a flag, etc.

7. Hang the charts around the room.

8. Instruct students to fill in their Cultural Data discs.

EXTENSION: Instruct students to write or illustrate a comparison of how their lives in the space colony are different from their lives here on earth. Encourage the students to list the pro's and con's of each life style and then to choose which they prefer, justifying or giving reasons for their choice. Students could also create a three dimensional mascot to match the one imagined by the Mascot Group.

LESSON 5

SUGGESTED CHART HEADINGS

SPORT

NAME

EQUIPMENT

RULES

WHO PLAYS

WHY SPACEKIND LIKE IT

MASCOT

NAME

WHERE FROM (ORIGIN)

DESCRIBE OR DRAW

CARE IT NEEDS

WHY SPACEKIND LIKE IT

MONEY

NAME

DENOMINATIONS

RELATIVE VALUE TO US $

APPEARANCE

WHAT IS IT MADE OF?

HOLIDAY

WHO CELEBRATES

WHEN

WHY

HOW

NAME OF HOLIDAY

EDUCATION

AGES

SUBJECTS STUDIED

HOW LONG

LOCATION

WHO GOES

ANTHEM

TITLE

TUNE

WORDS

FLAG

COLORS

SYMBOLS AND MEANING

DESIGN

COLONY MAP

GEOGRAPHY

POPULATION CENTERS

LESSON 6

OBJECTIVES:

1. The students will create "Spacekind" beings.
2. The students will dress their beings in work clothes.
3. The students will write a job description for their being's occupation in the space colony.

MATERIALS:

*Standard school art supplies[1]
*Handouts 1 and 2 - Job Description and Blank
*Spacekind cut-out (optional)

PRIOR TO LESSON:

1. Determine what size of Spacekind being you want your students to create. A sample of one is included in this lesson. However, you might consider having the students enlarge the model. Another option is to have the students outline each other on very large paper, so their size and shape are the models for Spacekind.

2. Make copies of the Job Descriptions (or make an overhead transparency) and the Job Description Blank for the students.

PROCEDURES:

3. Pass out the Job Description of an Earthkind to the students. Ask for volunteers to read. Ask students to identify each section of the job description. Discuss the purpose of a job description: informs workers of qualifications they should possess to apply for the job; details responsibilities; and gives salary.

4. Brainstorm possible occupations in the space colony. List on the board.

5. Pass out the Job Description Blanks to each student.

6. Ask each student to write a job description for one specific occupation of a Spacekind. Tell students that later, they will also create a model of Spacekind ready to go to work.

---

[1] You could use only recycled and/or landfill items from earth. You could also encourage the students to bring "space" materials from home.

This would be a good place to break the lesson if you want the students to bring supplies from home. If you are running out of time, break here and make the models during the next class meeting on space colonies.

7. After students have written their job description, have them begin creating their models and dressing them.

8. When they are complete, have the students introduce their model to the class and read the job description. Display the models and the descriptions somewhere in your school.

Bill of Rights

LESSON 6 JOB DESCRIPTION BLANK

JOB DESCRIPTION

Title of position

Location of position

QUALIFICATIONS

SPECIFIC RESPONSIBILITIES

SALARY

Bill of Rights

LESSON 6 JOB DESCRIPTION

JOB DESCRIPTION

ELEMENTARY SCHOOL SECRETARY

QUALIFICATIONS

- Ability to type rapidly and accurately (65 wpm minimum); use correct spelling, grammar and punctuation; set up various forms needed by the building.

- Knowledge of shorthand, speed writing or machine transcription.

- Receptionist duties--must be able to communicate effectively with students, parents, general public and school district personnel.

- Knowledge of basic bookkeeping and accounting procedures.

- Knowledge of filing/record-keeping system(s)--maintain appropriate files; familiarity with district student record system.

- Knowledge of standard office equipment and machines.

- General office managerial skills--ability to handle confidential information in an ethical manner; ability to work under pressure; ability to work independently.

- Familiarity with district policies and procedures appropriate to the elementary level.

- Personal characteristics--regular attendance; reliable; well groomed; cooperative; good judgment; professional; courteous manner at all times.

- Education and experience-six months formal training and/or related experience beyond high school.

SPECIFIC RESPONSIBILITIES

- Serve as receptionist; process mail, appointments and phone calls for principal, staff and students.

- Perform general secretarial and office management duties; operate standard office machines efficiently.

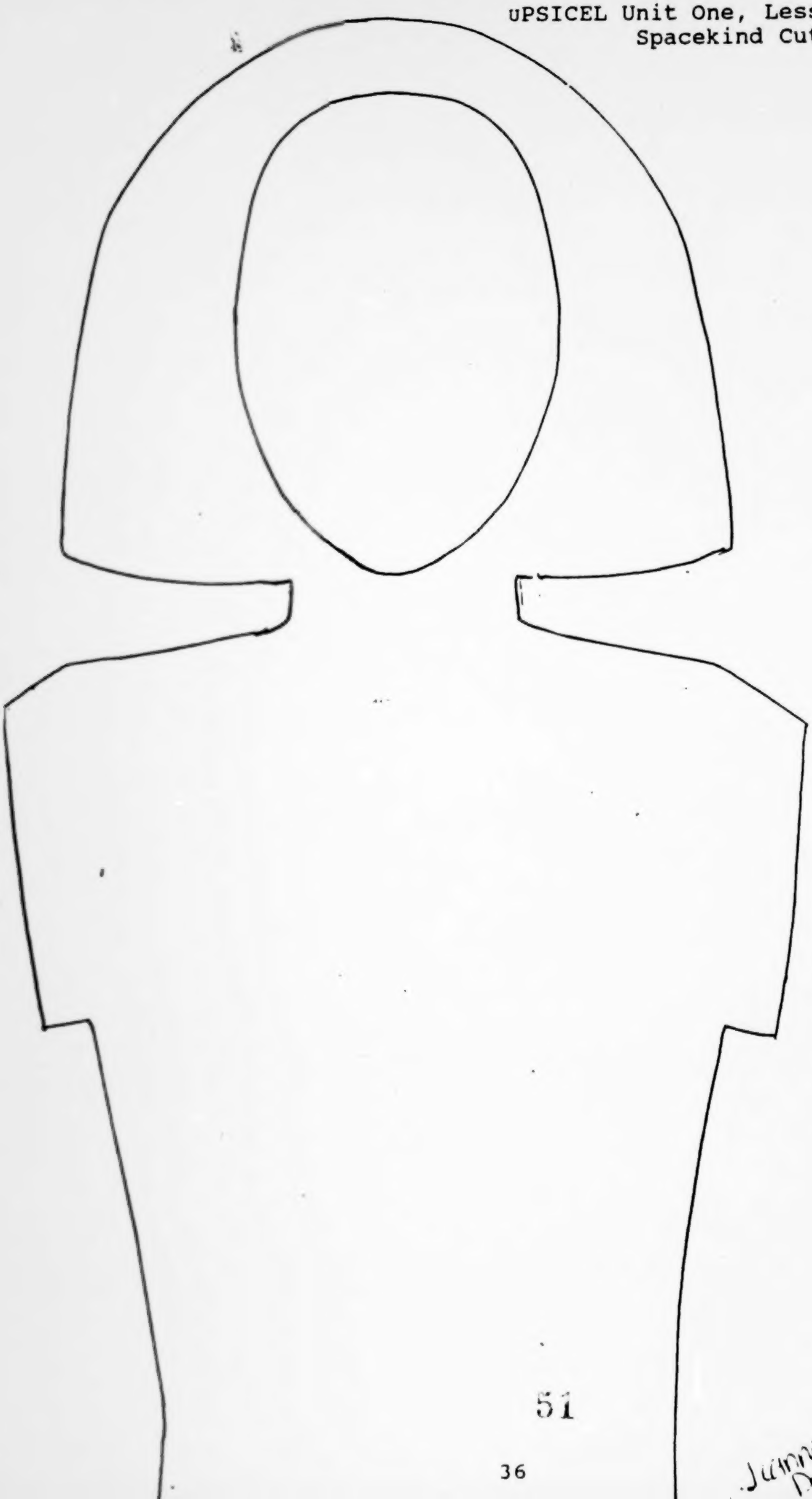
- Maintain active and inactive student records and process requests for records on students entering, transferring and withdrawing from school.

- Maintain daily, monthly, and quarterly attendance data; keep adequate records and make required reports.
- Order and distribute supplies, teaching materials and equipment.
- Maintain inventory for building including textbooks, equipment, etc.
- Register voters.
- Collect, record, and process information necessary for monthly building payroll.
- Supervise students who are sent to the office for disciplinary reasons.
- Manage health center; administer first aid and contact parents as deemed necessary; submit accident reports.

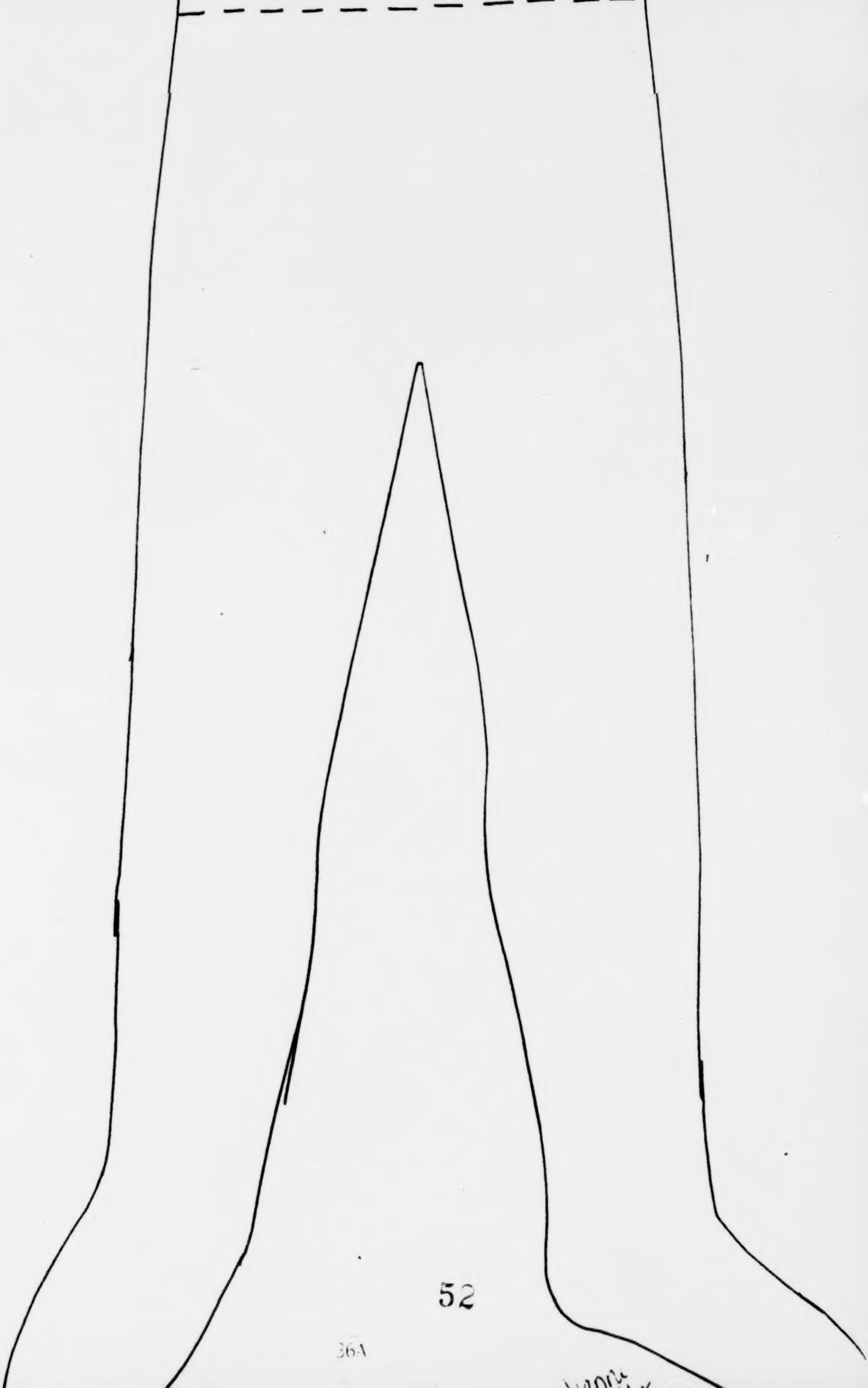
SALARY CLASSIFICATION

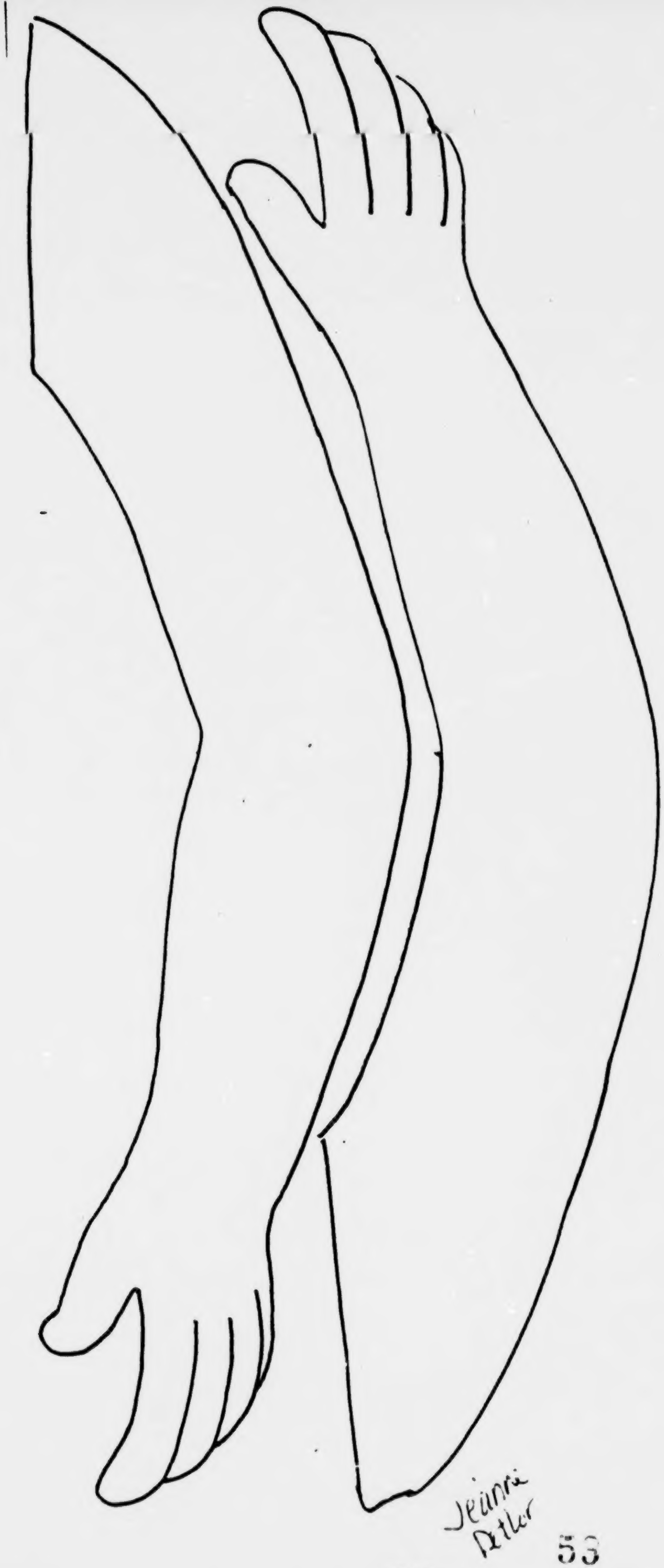
$20,000

UPSICEL Unit One, Lesson 6
Spacekind Cut-out



Jimmi Detler





Jeanne Detler

Lesson 7

OBJECTIVES:

1. Students will explore various forms of government by identifying characteristics of "good" governments and "bad" governments.

2. Students will analyze the U.S. Constitution.

3. Students will draft a constitution for their space colony.

MATERIALS:

*Copies of the U.S. Constitution, simplified version provided in unit
*Good and Bad Governments overhead

PRIOR TO LESSON:

1. Copy the U.S. Constitution for the students.

2. Make overhead transparency of Good and Bad Governments.

PROCEDURES:

3. Ask students to think of one thing they think is characteristic of a bad government. Give an example: a bad government refuses to listen to what its people want, and does not allow anyone to criticize the actions of the government. Ask them to write their characteristic down on a scrap of paper because they are to share it in a group.

4. Divide the students into their original space community groups. Ask them to share their bad government characteristic and to add any more they can think of. Ask one student in each group to be the reporter, and keep a list.

5. Ask each group to share their list of bad government characteristics while you write them down on a sheet of butcher paper or the board.

6. If students have difficulty getting started, prompt them by reading the following list of characteristics and asking students to put them in the list of "good government" or "bad government" characteristics.

    a. The government can make everyone in the country practice religion.

b. The head of the country cannot interfere with decisions made by judges in specific cases.
c. Citizens of the country can travel freely within the country and outside the country.
d. The government can limit news coverage of topics that put the country in danger.
e. The government has an obligation to make sure that every citizen has enough food, health care, clothing, and housing.
f. The government can set the maximum number of children a person may have.
g. The government can search homes of its citizens at any time and for any reason.
h. The head of the country can suspend the Constitution when the country faces a major crisis.
i. The head of the government should appoint the people who makes the laws (the legislators).
j. The highest court in the country can throw out laws written by the legislature if the laws conflict with the Constitution.
k. The people have the right to decide what conditions are permissible in prisons.
l. An area in the country should be able to prohibit nuclear waste disposal facilities within its borders, even if the country as a whole determines that the best place for such a disposal is in that area.
m. Persons who are arrested have a right to know what crime they are charged with.

7. Encourage analysis of what makes a characteristic "bad" and how the action might be remedied by asking:

1. What exactly makes this action bad? Is it unfair? Does it treat people in the same situation differently? Does it deprive people of freedom, their property, or other rights they consider important?

2. How would a good government handle this situation?

3. How would you define a "good" government, and a "bad" government?

8. Share with the students the overhead, Good and Bad Governments. Have them compare their definitions with the ones on the overhead.

9. Ask the students if they know any reasons for having a constitution. Lead them to the realization that a constitution unifies separate groups and individuals. In the last lesson, our culture became unified, now we are

going to unify our government. Pass out the simplified U.S. Constitution. Read, either orally or silently, one section at a time. Encourage students to ask questions about sections they do not understand.

10. Assign each group one of the following sections of the Constitution to analyze and decide: Can we take this Constitution into our space colony or does it need to be rewritten? If it does, rewrite it to fit our space colony.

1) Preamble
2) Article 1: Sections 1 and 2, 8-10
3) Article 1: Sections 3-7
4) Article 2
5) Article 3
6) Articles 4-7

To help each group focus on their section, pose these questions.

Preamble:	What are the objectives of the constitution -- what do its authors hope the constitution will achieve for the country and its citizens, and who are the authors and what authority do they have to write a constitution?
Article 1 Sect. 1-3, 8-10	What is the lawmaking body? Will members of the lawmaking body by elected or appointed? How will the election or appointment be done? What qualifications will members have? What happens if a lawmaker is no longer able to perform the job? Consider whether the lawmaking group should have all powers or whether the Government should only have the powers that are listed in this section. If the powers are limited, decide which powers the lawmaking group should have.
Article 1 Sect. 4-7	Decide when the lawmaking group will meet. How many members need be present to conduct business? How do they punish members for disorderly behavior? What records will the lawmaking body keep? Are the records private or public? Do the lawmakers have any special rights? Describe the process for making a law. Consider whether or not the three basic functions of government should be put together in one person or group or whether they should be divided, with checks and balances.

Article 2: Will there be a chief of the colony or committee to run the colony? Who will enforce the laws made by the lawmaking body? How will the chief or committee be chosen? What powers will they have? Who is eligible to be the chief or on the committee? How can the chief or committee be removed from office?

Article 3: Who will decide disputes among the inhabitants? How will this be structured? What cases can they decide? What type of hearings will be held?

Article 4-7: Can the space colony be enlarged? How will this be done? Will all inhabitants of the space colony have the same rights? How can the colony's constitution be changed? What law is supreme? What process will make the drafted constitution apply to the colony?

11. Give ample time for the rewriting process, and positive encouragement.

12. When all groups have finished with their sections, ask one student from each group/community to stand and read their section to the rest of the class.

> Note to teacher: At this point the focus is moved from individual communities to a collection of communities, just like the 13 states.

Ask for reactions from the other groups. Encourage discussion by asking questions such as:

> Will this section of the Constitution affect your community?
>
> Can you foresee any problems for your community, or for the colony as a whole?
>
> Would you change this section? If so, what alternative would you propose?

13. Ask students to make notes on their rough drafts of ideas for possible changes that result from the discussion.

14. Ask each group to turn in their "rough draft" of their section of the Constitution.

EXTENSION: Write an article for the space colony newspaper about the new Constitution. Be sure to include who, what, where, when, and why and a headline. This might be a good time to incorporate the computer and publish a paper from the colony.

Bill of Rights

LESSON 7

THE SIMPLIFIED CONSTITUTION OF THE UNITED STATES OF AMERICA

Preamble (Reasons for the Constitution)

We the People of the United States, in order to have a better government, to treat everyone fairly, to have a peaceful country, to defend the country from enemies, to live in a comfortable way, and to make sure people are free now and forever, make this Constitution for the United States of America.

Article 1 (The Legislative Branch)

Section 1. (Description)
This branch of the government, also called the Congress, shall make all the laws for the country. It shall have two parts or houses: the House of Representatives and the Senate.

Section 2. (House of Representatives)
Members of the House of Representatives shall be elected by the people for two years at a time (called a term.) They need to be at least 25 years old and live in the state they are elected to represent. They must have been American citizens for at least seven years before they can be elected.

The number of representatives from each state is determined by its population. States with large populations get more representatives than states with small populations. Every ten years there will be an official counting (or census) of all the people to see how many representatives a state gets.

Section 3. (The Senate)
Each state elects only two senators. They serve 6 year terms. Senators must be at least 30 years old and they must have been citizens of the United States for at least 9 years. They must live in the state they represent.

The Vice President of the United States is in charge of the Senate. However, the Vice President can only vote in the Senate when there is a tie.

Sections 4-7. (Rules)
The Congress shall meet at least once every year, beginning on January 3. Each House shall take care of their own procedures and the behavior of its members. Members cannot be arrested (except for serious crimes) while attending sessions of their Houses, and they cannot be

punished for anything they say while in speech or debate during the meetings. The government shall pay the members of the House and the Senate.

Proposed laws (bills) having to do with raising money must start in the House of Representatives. Bills approved by the House and the Senate must go to the President for approval. If the President does not approve, the bill goes back to the House and the Senate. If two/thirds of each House approves, the bill becomes a law without the President's approval.

Sections 8-10. (Duties)

The Congress makes all laws having to do with money, such as taxes. The Congress also makes all trade laws, such as buying and selling things to other countries. The Congress coins (makes) money, runs the post office, and provides inventors with patents. The Congress can declare war. Congress provides for and maintain the military.

There are also things the Congress and the States cannot do, such as give royal titles, keep private armies, or use government money in secret.

Article 2 (The Executive Branch)

Section 1. (Description)

The President, the Vice President, and those who work under the President to help carry out the laws Congress passes are the executive branch of the government. Both the President and Vice President are elected to 4 year terms. The President must have been born in the United States, be at least 35 years old and lived within the United States for at least 14 years.

Section 2-4. (Duties)

The President has many jobs, including carrying out the laws made by Congress, commanding the military, making treaties, appointing ambassadors and governmental leaders, receiving ambassadors and leaders from other countries. The President must report to Congress on what the nation is doing. (The State Of The Union address given each year when Congress convenes.) The President may be removed from office (impeached) if he/she commits a crime against the government. The President also has the power to pardon federal criminals.

Article 3 (The Judicial Branch)

Section 1. (Description)

The judicial branch serves as the court system for the whole country (federal court system). The Supreme Court, the highest court in the nation, has the final say in all matters of law. Federal judges are not elected, they are appointed for life.

Section 2. (Cases to be heard-jurisdiction)

The federal court system has the say in all cases involving this Constitution, involving laws made by Congress and certain other types of cases involving people from different states.

Section 3. (Treason)

Treason is explained as the act of a U.S. citizen trying to overthrow the government. No one can be convicted of treason without the testimony of at least two witnesses or by public confession of the accused.

Article 4 (The States)

Section 1-4. (Rules about the States)

The states must accept each other's laws, records, and acts. When someone is visiting a state, he/she must be given the same rights as someone living in that state. Accused criminals can be sent back to the state where a crime was committed for trial by the governor of another state. New states may join the union. All states are protected from enemies by the United States government.

Article 5 (Amendments)

The Constitution can be changed (amended) with the cooperation of the Congress (House of Representatives and Senate) and the States.

Article 6 (The Highest Law)

The Constitution, treaties, laws made by Congress made by the U. S. are higher than state laws. All lawmakers, both national and state, must take an oath or affirmation to support the Constitution. However, no religious test shall ever be required as a qualification for any office in the United States.

Article 7 (Ratification)

This Constitution becomes law when 9 of the 13 states ratify (approve) it.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the Independence of the United States of America the Twelfth. The members present witnessed and signed the Constitution.

New Hampshire on June 21, 1788 ratified the Constitution, completing the nine States required by Article 7 as sufficient for the establishment of the Constitution.

Bill of Rights

LESSON 7

GOOD AND BAD GOVERNMENTS Overhead Master[1]

More than 2,000 years ago, Greek philosophers, such as Plato and Aristotle, classified governments in a way that is still useful. In trying to identify the best kind or kinds of government, they arrived at the following definitions:

Good governments have rulers who care about the community. They rule according to law. For example, if the law says pickpockets must spend from 6 months to 1 year in jail, then all persons found guilty of picking pockets will serve that time in jail, no matter who they are.

Bad governments have rulers who care about special groups and not about the whole community. They do not follow the law, instead they do whatever they please. For example, even if the law says that all pickpockets must spend from 6 months to 1 year in jail, the rulers may say some don't have to spend any time because they are friends, or some may have to spend five years because they didn't pay a bribe to the government.

Whether a government was ruled by one person, by a few people, or by many was not important. Even a government ruled by a king or queen could be a good government if it were ruled for the good of the community and according to law.

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[1] Taken from We the People, Center for Civic Education for the National Bicentennial Competition on the Constitution and Bill Of Rights, Calabasas, California, Book 1, Lesson 3, p. 13.

LESSON 8

OBJECTIVES:

1. The students will examine their space constitution, evaluating the need for changes.

2. Students will define consensus and compromise.

3. The students will practice critical thinking skills through a study of consequences.

MATERIALS:

*Space Constitution from last class (rough draft)
*Consequences chart

PRIOR TO THE LESSON:

1. Make enough copies of the rough drafts of the newly written space constitution and the consequences chart for all students.

PROCEDURES:

2. Announce that the first draft of the newly written space constitution has just been returned from the printers and it is necessary for the authors to do a final evaluation, make final compromises, proofread and approve their document.

3. Ask students, either individually or in small groups, to assess and evaluate the document as a whole by reading through the rough draft silently, and completing the consequences chart. Tell students to consider any consequences to themselves, their family and friends, etc.

4. Ask students to share their Pro and Con statements. What changes should be made to address the Con statements?

5. Introduce the concepts consensus and compromise. (Students will already be experienced in the practice of these concepts from previous lessons, particularly the "Pool and Pick" activity described in Lesson 2.) Write the word "consensus" on the board, and ask for a definition.

> Consensus is a collective opinion, or general agreement about some matter.

Write "compromise" on the board and ask for a definition.

> Compromise is the process of coming to an agreement or settlement by means of making concessions.

Tell (or remind) students that when the authors of our Constitution were writing it, they spent the entire summer of 1787 in Philadelphia, drafting, re-drafting, and trying to come to a consensus on the best Constitution, by way of debate and compromise. The 55 delegates to the Constitutional Convention represented different states in the Union, just as the students "represent" different space communities in our space colony.

5. Then read the space constitution together, aloud. Elicit from students the issues that still need to be resolved, and list those on the board or overhead. Be sure to call on the author group to explain their logic for what they wrote before opening the discussion to the whole group.

6. Encourage discourse and compromise. Facilitate the high level of thinking that will occur as the students deal with the ideals and concepts of the Constitution as it relates to their space colony. Work toward consensus.

7. Make changes. (If possible, have the document on computer disk and make the changes immediately so the students can see and approve of the changes instantly.)

8. Tell the class they will now be the "Committee on Style," and their job is to correcting any grammatical, spelling or other errors they notice as they read through the Constitution. Give time for a thorough review.

9. When the final changes have been made, invite the students to sign the document as an indication of their approval. Remind them, however, that not all the founders of our Constitution signed the document, and they do not HAVE to either. (Make copies of the document with their signatures and send home, share with the principal, the local paper and the PTA.)

EXTENSION: Integrate math skills by having students make three different graphs (pictograph, bar, and circle) using the same information, NUMBERS OF SPACEKIND BY AGE SUPPORTING THE CONSTITUTION. [The key here is that the information should remain the same, only the way it's represented changes.]

Bill of Rights

CONSEQUENCES CHART

PRO	CON
ME	
FRIENDS AND FAMILY	
EARTH	
SPACE COMMUNITY	
SPACE COLONY	

LESSON 9

OBJECTIVES:

1. The students will define "rights."

2. The students will analyze the U.S. Bill of Rights.

3. The students will create an Intergalactic Bill of Rights.

4. The students will evaluate and amend their space constitution.

MATERIALS:

*Copies of completed space constitution, from last class
*Overhead transparency of U.S. Bill of Rights (simplified)

PRIOR TO LESSON:

1. Make copies of signed constitution and Bill of Rights overhead.

PROCEDURES:

2. Begin the class by asking for a definition of "rights." Prompt students by asking "Is freedom a right? Is having enough food to eat a right?" What does the word mean to them?

> **Rights** can be classified into many different categories, but for our purposes here, "rights" means "generally accepted principles of fairness and justice."

3. Pose the question: Do we need a Bill of Rights for our space colony? If so, why?

> You can help the students see the need for a Bill of Rights by posing the following hypotheticals:
>
> a. Tofu steals a piece of candy from the corner store. He is arrested and taken to jail, where the police sergeant decides that the punishment will be to cut off Tofu's right index finger.

This would be cruel and unusual punishment, which is not allowed under the eighth amendment of the U.S. Bill of Rights. Suggest to students that they may need to include a right protecting the Spacekind from such treatment.

b. The government of the space colony has manufactured an army of robots, called "Terminators," to enforce the laws. These robots are programmed to seize any citizen suspected of committing a crime, and take them to jail. Arwen is shopping at the Astro-Mart when she is suddenly scooped up by a Terminator and whisked away to jail. She has no idea what she is accused of and what she can do to be released.

This raises questions about unreasonable search and seizure, protected by our fourth amendment, and fair trial procedures, protected by the fifth and sixth amendments. Should the robots be able to arrest anyone suspected of a crime? Can the robots make reasoned judgments about probable cause, as police officers are required to do? How can the space colonists protect themselves from this happening?

What type of protections does Arwen need?

c. Gandalf is a student at Cosmos Middle School. He has started a school newspaper, to report about school sports events, the latest in computer games, and news about the local community. His first issue includes an article about the upcoming visit of Earthkind to evaluate the school. The article is critical of some of the school policies, such as requiring all students to learn Earthspeak. Before the first issue even comes out, the Principal tells him that school newspapers are not allowed, and all copies of the newspaper will be burned.

This hypothetical raises issues of free speech and free press, protected by the first amendment. There is a whole line of cases about school newspapers, and when they may be controlled or censored by school authorities. In the case above, the Principal is not allowing any type of newspaper, and his or her censorship seems to be based on the criticism of the school policy.

In Hazelwood v. Kuhlmeier, decided by the U.S. Supreme Court in 1988, the Court held that the school administration has editorial control over a school newspaper when it is part of a regular class. Educators must show their actions in censoring or controlling the content of the paper were reasonably related to legitimate educational concerns.

d. Angela is a member of the Interplanetary Church of Pluto. The space colony outlaws her Church, and tells Angela she must join the Intergalactic Church of Venus.

This would be a violation of the first amendment of the U. S. Bill of Rights, which protects the free exercise of religion. Students may want to include the protection to freely worship in their Bill of Rights.

4. After posing the hypotheticals, brainstorm as a class other rights that they want to protect. List these on the board.

5. Ask students to group themselves into their original space communities. Ask them to review their data discs to see if any other rights may need to be protected under the new constitution. Each space community should cooperatively prepare a list of at least 6 rights they feel must be protected. Share the Bill of Rights from the U.S. Constitution as a model for the students. Then give each space community time to work on their lists.

6. Have each group rank their list in order of importance. (You may want to use the Delhi technique from Lesson 4.)

7. Develop an Intergalactic Bill of Rights by having one group read their first priority while you write it on the board or overhead. Then the second group reads their first priority, and so on. If a group's first priority has already been read, they should read their second priority. Continue this process of round robin reading and sharing until an Intergalactic Bill of Rights is developed that satisfies the students.

8. Using the procedure for amendment under Article V of the Constitution, amend the Constitution by adding this document.

9. Post the completed document in the classroom. Save a copy for future use.

EXTENSION: Instruct students to write a letter to a friend back on earth about their feelings regarding the newly written Constitution and Intergalactic Bill of Rights.

Bill of Rights

SIMPLIFIED UNITED STATES BILL OF RIGHTS[1]

FIRST AMENDMENT
This amendment guarantees the right of freedom of religion, freedom of speech, freedom of the press, the freedom for people to get together peacefully, and the freedom to send petitions to their government.

SECOND AMENDMENT
This amendment states that in order to have a prepared military, people are guaranteed the right to keep and bear arms.

THIRD AMENDMENT
This amendment states that the government cannot force the people to house and feed soldiers in their homes during times of peace.

FOURTH AMENDMENT
This amendment states that people, their homes or their belongings are protected from unreasonable searches or seizures. Warrants may not be issued except upon probable cause, and must specifically describe the place to be searched and the person or thing to be seized.

FIFTH AMENDMENT
This amendment guarantees a person accused of a serious crime the right to be charged by a grand jury. Persons cannot be forced to give evidence against themselves. If a person is found not guilty of a crime, he/she cannot be put on trial for the same crime again. Peoples' lives, freedom, or property cannot be unfairly taken from them. The government must pay a person for any property it takes from them for public use.

SIXTH AMENDMENT
This amendment guarantees a speedy and public trial by an impartial jury if a person is accused of a crime. The accused has the right to be told what they are accused of. They have the right to a lawyer. They have a right to see and to question those people who accuse them of the crime.

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[1]. This focuses on the first ten amendments, but many rights are included in the body of the Constitution and in subsequent amendments.

SEVENTH AMENDMENT
This amendment guarantees a trial by jury in civil cases. (Disputed between private parties or between the government and a private party.)

EIGHTH AMENDMENT
This amendment guarantees that excessive bail or excessive fines will not be imposed and that punishment will not be cruel and unusual.

NINTH AMENDMENTS
This amendment states that the people have other rights that are not stated here.

TENTH AMENDMENT

This amendment states that the people have all the rights not given to the United States government or forbidden to state governments by the Constitution.

LESSON 10

OBJECTIVES:

1. The students will compare the Space Colony Bill of Rights with the U. S. Bill of Rights.

2. The students will discuss the importance of the Bill of Rights.

3. The students will amend their space constitution.

MATERIALS:

- *Copies of the U.S. Bill of Rights (from Lesson 9)
- *Overhead transparency or copies of the Intergalactic Bill of Rights

PRIOR TO LESSON:

1. Make copies of the handout and overhead transparency.

PROCEDURES:

2. Tell the students that the U.S. Bill of Rights has lasted since 1791. Instruct them to work in small groups to compare their Intergalactic Bill of Rights to this long standing document. Identify the similarities. List the differences.

3. When the groups are finished, ask students to share the similarities they found. List on the board or overhead.

4. Ask students to share the differences. List on the board or overhead. Discuss why there are differences (e.g. different environment, different time, different people, different needs, etc.)

5. If students wish to after the comparison, have them amend the Intergalactic Bill of Rights to the Constitution. Use the amount of votes needed to amend as stated in Article V of the space Constitution. Post the document in the classroom. Send home copies with the students. Save a copy for future use.

EXTENSION: Instruct students to write a three paragraph essay. The first paragraph should list the similarities of the Intergalactic Bill of Rights to the U.S. Bill of Rights. The second paragraph should list the differences and give some reasons for the differences. The third paragraph should discuss why the Intergalactic Bill of Rights will or will not last over 200 years, as the U.S. Bill of Rights has.

UNIT TWO - THE TRIAL OF HERSCHEL C. LYON: AN ENVIRONMENTAL DILEMMA

SOURCE:

Written for the University of Puget Sound Institute for Citizen Education in the Law by Tarry L. Lindquist, researched by Julia Gold and edited by Margaret Armancas-Fisher and Julia Gold. The **Street Law Mock Trial Handbook** served as the foundation for this unit.

USE OF OUTSIDE RESOURCE PERSONS: This unit is much enhanced by using outside resource people. A judge, lawyers and/or law students (beyond first year) will be able to help the teacher with the legal concepts and procedures. Inviting in environmental experts would enrich the students' knowledge and appreciation for the complexity of the issue they are studying.

CLASS PERIODS: 12-15

DESCRIPTION:

This multidisciplinary unit is centered on giving students practice in using higher level thinking skills. Blending learning about the trial process with a current environmental issue makes this unit unique. This unit could help meet environmental education requirements. The unit is designed to involve the full participation of all students in a classroom all of the time. Cooperative learning is a core strategy used to achieve this goal.

OVERALL OUTCOMES:

Teachers will discover that they can readily use their reading, language arts, social studies and/or science periods to teach this unit as the integrated skills used meet common student learning objectives in all four subject areas.

Reading and Language Arts Outcomes:

1. The students will read newspaper articles to determine points of view.
2. The students will analyze newspaper articles in small, cooperative groups.
3. The students will categorize facts from given newspaper articles.
4. The students will read and analyze sworn statements.
5. The students will demonstrate an understanding of the concept of "innocent until proven guilty beyond a reasonable doubt," by drawing a cartoon.

6. The students will participate in a play.
7. The students will evaluate the outcome of the play and extend it by writing a Bill of Rights.
8. The students will identify role responsibilities for a trial after reading a handout.
9. The students will read and differentiate between types of evidence.
10. The students will read and apply standard objections.
11. The students will demonstrate skill in listening.
12. The students will demonstrate skill in extemporaneous speech.
13. The students will write material for the trial.
14. The students will write a critique of the trial.

Social Studies and Science Outcomes:

1. The students will demonstrate understanding of the complexity of the steelhead/sea lion problem at the Ballard Locks by conducting a mock trial.
2. The students will identify reasons for the increase of sea lions at the Locks.
3. The students will generalize how changing water passages can affect the food chain and spawning patterns of some species.
4. The students will identify the key players in the steelhead/sea lion problem.
5. The students will trace the spawning patterns of steelhead.
6. The students will trace the migration patterns of sea lions.
7. The students will become familiar with the Marine Mammal Protection Act and some of its implications.
8. The students will identify unfair decisions by the ruler in a play.
9. The students will state the procedural guarantees that should be included in a Bill of Rights.
10. The students will compare their lists to the procedural guarantees (due process) provided by the U.S. Bill of Rights.

11. The students will conclude that due process is an essential element of the Bill of Rights.
12. The students will explain the purpose of trial procedures.
13. The students will identify alternatives to the trial process.
14. The students will conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
15. The students will demonstrate knowledge of the rules of evidence and procedure.
16. The students will demonstrate knowledge of the homicide.

Higher Level Thinking Skills Outcomes:

1. The students will practice independent and group decision-making.
2. The students will define legal roles and practice the responsibilities attached to those roles.
3. The students will solve problems related to ecological and legal concerns.
4. The students will choose logical solutions from a series of options.
5. The students will analyze the concept of procedural justice (due process.)
6. The students will synthesize certain basic rights guaranteed by the U.S. Bill of Rights.
7. The students will practice arguing sides of an issue.
8. The students will identify facts that support or weaken arguments.
9. The students will practice using the theory of a case to write arguments for or against.
10. The students will differentiate between similar kinds of instances.
11. The students will demonstrate skill in rapid critical analysis.
12. The students will apply knowledge of the law.

13. The students will critique the trial from the standpoint of its success in achieving justice.

Additional Resources:

Street Law Mock Trial Manual, NICEL, 1987. Available from Social Studies School Service, (800) 421-4226.

Mock Trial Manual for Elementary and Middle School Educators, Utah Law-Related Education Project, 1991. (801) 538-7719.

LESSON 1

OBJECTIVES:

1. Students will read newspaper articles to determine points of view.
2. Students will analyze newspaper articles in small, cooperative groups.
3. Students will identify facts in relation to point of view.

MATERIALS:

*Copies of newspaper articles
*T-Chart Handout

PRIOR TO LESSON:

1. Divide class into small, cooperative groups of no more than 3 or 4 students. Make copies of the following newspaper articles so each group has one article to read and analyze.

2. Read Mock Trial Administrative Checklist, Lesson 8.

PROCEDURES:

3. Ask the students how many of them have heard of the problem of the sea lions and the steelhead at the Ballard Locks. Ask them what they think they know. Discuss.

4. Some of the sea lions have been given names. Do any of the students know what the names are?

Herschel was the first to be identified by the media by name. Diners at a popular restaurant near the locks enjoyed watching him frolic at the foot of the fish ladder in 1985. By the next winter, Herschel brought a few friends. Now each spring, nearly 40 sea lions dine daily on steelhead returning to fresh water to spawn. One of those includes 900 pound **Sandy**, branded no. 42, recently returned from a deportation to California's Channel Islands. His friend, **Andre**, is 7 foot 4 inches and weighs 540 pounds.

5. Tell the students they are going to read information from the newspapers to find out more about the problem of the sea lions and the steelhead at the locks. As they silently read their article, they should identify the problem and mark any facts that have to do with the problem.

Pass out newspaper articles. Read silently.

6. In each small group, identify a recorder, the student whose first name is closest to the letter H, for Herschel. Give each group 10-20 minutes to complete a T chart (Handout) listing facts in favor of the steelhead or sea lion from their article.

7. Ask each group to share the facts they were able to find about the steelhead in their articles. List on the overhead or on butcher paper. Then do the same for the sea lion. Discuss what the students now know as a result of the reading and analysis. Identify what else they would like to know.

8. Collect the worksheets. They'll be used in Lesson 5.

EXTENSION: Allow students to choose to research either sea lions or steelhead to share with the class.

Devise a survey about the steelhead and the sea lions. Poll the school yard or neighborhood. Graph the results.

Take a field trip to the locks.

Invite a fisheries expert in to talk about the issue.

Explore the possibility of raising a few steelhead in a tank at school.

LOS ANGELES TIMES

January 29, 1990, Monday,

FREELOADING SEA LIONS WEAR OUT WELCOME, FACE EVICTION

By Tamara Jones, Ballard, Wash.

A "gang of marauding sea lions" has discovered that there is such a thing as a free lunch 1,500 miles from their California home, touching off a political battle that could spell slaughter for dozens of the animals under the very law designed to protect them. Washington state officials have spent five years and hundreds of thousands of dollars trying to keep the flippered freeloaders from decimating a prized run of wild steelhead trout in a shipping channel between Puget Sound and Lake Washington.

Rock music, killer whale recordings, tainted fish and 6,000 rounds of M-80 firecrackers so far have failed to discourage the 40 to 60 sea lions who consider the man-made fish ladder at Ballard Locks their private smorgasbord.

"We're at the bottom of our bag of tricks relative to non-lethal measures," admitted Joe Scordino, deputy director of the northwest regional offices of the National Marine Fisheries Service, which has jurisdiction over the animals.

This year, Washington is hoping to get $170,000 in federal funding to capture the sea lions and truck them home to the Channel Islands off Santa Barbara, but California is balking at the plan, even suggesting at one point that shooting the sea lions would be a preferable solution.

Washington fish and wildlife officials are now combing the National Marine Mammals Protection Act for legal loopholes that would allow them to do just that as a last resort -- a precedent that could dramatically alter interpretation of the 1972 law.

The fight over the fate of the creatures Seattle fans generically nicknamed "Herschel" is considered unique because it makes man both the instigator and the mediator in a conflict between two wild species.

Some say the dwindling steelhead run represents far more than a convenient recreational opportunity for local anglers, or a modest income for the two Indian tribes whose treaty rights permit commercial trout fishing.

"The greatest value of that run is as an environmental barometer," said Bob Byrne, spokesman for the Washington Department of Wildlife, which oversees the steelhead. "It serves as a miner's canary on how we treat our environment. As long as the fish live, it must be relatively clean.

"Yes, there are other steelhead runs in other places. But there's a danger in that argument. Then you can say 'let me cut this tree or pollute this stream -- there's always more,'" he said.

But some environmentalists disagree that sea lions are the culprit in the Case of the Disappearing Fish.

"Different things are adding to the steelhead decline," said local Greenpeace spokeswoman Cynthia Rust. "Habitat destruction, for example. In Seattle, you can go to a couple of places where you used to see a spawning stream and find a parking lot or mall. "There's also pollution, and interception of the run by high sea drift-net fleets from Japan, Taiwan and Korea," she said. "One Taiwanese vessel was apprehended and 4,000 tons of illegal salmon were found in the hold."

Nevertheless, over the years, the sea lions have grown in both number and girth at Ballard Locks, devouring up to 64% of a year's steelhead run -- as many as 2,000 of the large fish. The run peaks from mid-February to mid-March.

The locks and dam were built nearly 80 years ago to control the water level in Lake Washington and provide ship and barge traffic between Lake Washington, Lake Union and Puget Sound. Part of the channel floor is concrete, and the rest is scoured clean for ship traffic. There are no kelp beds or other natural hiding places for the migrating fish.

One theory for the sea lions' sudden appearance at Ballard Locks is that they began following large schools of fish moving northward with the warming waters of El Nino several years ago. Because the locks mark the convergence of fresh and salt water, the fish mill downstream while undergoing physiological changes for their freshwater migration over the man-made "ladder" of ascending pools which will take them around the dam to their spawning streams.

"The fish are sort of in a trance," explained Rust, the spokeswoman for Greenpeace, which advocates a physical barrier such as old tires to give the fish cover on their way to the ladder.

"The steelhead are maybe slower than usual, and they are single-minded about getting upstream despite a predator in the area," she said.

The sea lions are equally determined. Byrne said he has seen one sea lion alone gobble 16 steelhead in a single day.

"Those sea lions run 900 pounds. They're the size of three Brian Bosworths -- three middle linebackers. They need to eat 5% of their body weight a day. They want the easy life and they've found it at Ballard Locks.

"Although most of the sea lions hunt at the mouth of the locks, about a dozen swim right past the ships to take up position at the entrance to the fish ladder, where the confused fish wait for the water flow to pull them into the system of pools. On a recent day, three of the sea lions frolicked in the water spilling from the dam. "The fish are running a sea lion gauntlet," Byrne said. Passions run so high here that wildlife officials received serious death threats last year when they suggested firing rubber bullets at the sea lions to drive them off; they are bracing for another outcry this year if an experiment with rubber arrows is carried out. On the other hand, fishermen have been known to paint "Kill Herschel" signs on their boats.

The Marine Mammals Protection Act allows fishermen to kill the animals if necessary to protect their catch and gear, but there is no clear-cut provision for state officials to do the same to protect a fish run.

The possible loophole is a provision for destroying marine mammals that threaten public resources and welfare. Washington officials are hoping that the steelhead run at Ballard Locks might be considered a public resource, even though steelhead themselves are not considered an endangered species. Public hearings on the controversy usually degenerate into shouting matches between angry fishermen and environmentalists, and hundreds of solutions -- most of them unfeasible -- have poured in from concerned citizens.

"We've had some doozies," Scordino said. There were people who suggested introducing polar bears to the Locks, which are in a park flanking a residential neighborhood about five minutes from downtown Seattle. Others wanted to use helicopters to help the steelhead trout escape by airlifting them over the small dam. Some firm tried to peddle its chemical compound, which turned out to be a derivative of nerve gas.

"People say to pour vinegar in the water, or have the Eskimos come talk to the sea lions, or put killer whales in the channel," Scordino said. A net barrier didn't work, and neither did an acoustical assault with the sea lion equivalent of fingernails on a blackboard.

Now, a team of 18 engineers and biologists is studying ways to alter the locks and give the fish a fighting chance, but such a permanent solution is expected to take years of study and design, not to mention millions of dollars. The Army Corps of Engineers must approve -- and probably fund -- any structural changes.

Last year, wildlife officials captured and tagged 39 of the sea lions. The tranquilizers killed two, but the remaining 37 were turned loose 300 miles down the Washington coast. Twenty-nine showed up again in time for Sunday brunch at Ballard Locks.

Biologists say the sea lions are young unmated males who migrate from their breeding grounds in the Channel Islands of California when romance fails to bloom. They usually head back in May, though a few are beginning to hang around Seattle year-round. Eleven of the tagged animals were spotted in the Channel Islands during pup counts last summer.

The relocation plan would basically put the sea lions back in the Channel Islands two months ahead of their natural calendar, and make the swim back to Ballard Locks long enough for the peak steelhead season to pass, according to Washington officials.

But California fishermen and state agencies complain that this would merely transfer nuisance animals from one place to another without solving the problem. In a recent letter to the California Coastal Commission, the Pacific Coast Federation of Fishermen's Associations bitterly objected to the proposed transfer of what it dubbed "a gang of marauding sea lions."

"California sea lions are not (permanent) residents of California," wrote executive director Zeke Grader, Jr. "California sea lions have historically ranged along the whole Pacific Coast.

"The animal is not some sex offender that can be sent back," he continued. "Frankly, the proposal smacks of the California bashing that is all too fashionable currently in the state of Washington."

No lawsuits have been filed, but California officials privately say they will go to court to block the sea lions' return.

While they agree that 60 sea lions would not make much difference in a year-round population of some 80,000, California officials and fishermen worry that relocation could open the door for turning the state into a dumping ground for problem animals.

Pete Bontadelli, director of the California Department of Fish and Game, told Washington officials in a letter last July that the department opposed shifting the problem "from one area to another."

"We recognize that available non-lethal options to deal with this problem have proven ineffective to date," he wrote. "Therefore, lethal removal of the problem animals may be the only practical and effective long-term solution." Bontadelli could not be reached for further comment.

The California Coastal Commission, going against its own staff findings that a sea lion transfer would be harmless, opposed it on similar grounds. "We believe they should deal with a Washington problem in Washington," said Hal Cribbs, executive secretary for the commission. "We're not shipping our problems up there."

But whether California has any real say in the matter may also be a matter for courts to decide, since the final decision now rests with the National Marine Fisheries Service, a federal body.

And California's concerns "aren't realistic," Byrne charged. "They're problem animals specific to Ballard Locks. If they were threatening a resource in California, they'd stay in California. It's a 1,500-mile trip." "We've pretty well eliminated easy, inexpensive and low-risk options," the Wildlife Department spokesman added. "And we're certainly not willing to give up those steelhead. "

THE SEATTLE TIMES

February 3, 1990, Saturday

BEGINNING OF THE END FOR HERSCHEL AND PALS?

BY O. CASEY CORR

In a major policy step, the National Oceanic and Atmospheric Administration will begin a process that could lead to killing of sea lions at the Ballard locks, the agency's regional administrator said.

NOAA Regional Director Rolland Schmitten yesterday said within 30 days his agency will publish in the Federal Register a question by the state of Washington as to whether killing sea lions to protect steelhead is allowed under the Marine Mammal Act. The 1972 law makes it a crime to kill or harass marine mammals except under limited circumstances.

Publishing the question could represent the first step toward the killing of sea lions, according to Joe Scordino, resource management specialist with the National Marine Fisheries Service.

Schmitten said a decision to allow the state to kill sea lions would require a year-long process of public comment and study.

Any decision would be made by NOAA headquarters in Washington, D.C. and any approval would include strict conditions, Schmitten said. He described the process as an exploration as to whether killing would be permitted under the law.

Cynthia Rust, spokeswoman for the environmental group Greenpeace Action, said environmentalists around the nation would fight the proposal, which represents the first effort to kill mammals to protect a fishery.

Killing sea lions at the locks would be a clear violation under the law and would offer no long-term solution to the problem, she asserted.

Curt Smitch, director of the state Department of Wildlife, said that all non-lethal approaches to protect steelhead will have been tried by the end of this season, except for possible changes to the locks. Changing water flows in the spillway and fish ladder is under review.

Last September, Smitch formally asked NOAA whether he had the option of killing sea lions. "I don't have anything left in my bag of tricks," he said.

Smitch and Schmitten said neither of their agencies was calling for killing sea lions, but were willing to raise the question.

In cooperation with the NOAA's National Marine Fisheries Service, the state has tried firecrackers, fish laced with repulsive flavors, nets, amplified sounds of sea lion predators and even a program to truck sea lions to Washington's coast.

Sea lions last year ate 65 percent of the wild steelhead attempting to enter Lake Washington, a rate that will wipe out the run within a decade, the state says.

Smitch and Schmitten jointly announced yesterday that about 10 sea lions will be trucked to southern California's Channel Islands, breeding ground for the California sea lion. Those sea lions will be trapped, tagged with a radio locator and sent south. The relocation program will cost $ 15,000.

Remaining sea lions will be either driven away with firecrackers and rubber tipped arrows fired from cross bows or offered fish containing a chemical that makes sea lions throw up.

The overall program is expected to begin within the next two weeks.

Schmitten said his lawyers have advised him the relocation program did not need the support of the California Coastal Commission, which recently voted to oppose sea lion relocation.

Jack Liebster, public information officer with the California commission, said the relocation of 10 sea lions would be regarded as a new request.

If the commission objects to the smaller proposal, it could appeal to the secretary of the U.S. Department of Commerce, of which NOAA is a part, Liebster said.

THE SEATTLE TIMES

March 18, 1990, Sunday

TRAGEDY OR COMEDY -- IN HERSCHEL THE MOVIE, THERE'S A STAR, A VICTIM AND A SUPPORTING CAST, BUT NO HAPPY ENDING

BY O. CASEY CORR

On a remote beach on Whidbey Island, three men walk toward a 700-pound corpse. One carries a shotgun.

There on the beach lay a dead sea lion. Dead or alive, sea lions smell bad. Alive, they smell like a stockyard. Dead, they smell worse. This one, dead about a week that day in 1987, was starting to turn. Sometimes when he worked on dead sea lions, state Department of Wildlife biologist Steve Jeffries smoked a cigar to mask the smell. He didn't this time. The men got to work.

Had anyone else come upon that beach, a few miles north of Sandy Point, they might have been shocked to see three biologists fire on a dead sea lion, a first of sorts in the field of marine science. The men stood at varying ranges and distances from the carcass, firing 10 times into the heap of blubber and fur.

Science is the pursuit of answers. Scientists are the high priests of the technological age. People do not usually laugh at scientists but they are now. As characters trapped against their will in a tragicomedy called " Herschel the Sea Lion," biologists Pat Gearin, Blaine Ebberts and Jeffries are serious people playing roles that make them look sillier and sillier. The audience giggles, and then roars.

Faces on the biologists turn red. The harder they try to get off stage, the more people laugh. It's unfair and beyond their control, they say. Other players enter and exit the stage, beating their breasts and seeking the moral high ground. In the public's mind, the drama casts people into two camps: fish lovers and sea lion lovers. Cheering for the fish are fishermen, the state's Department of Wildlife, Native Americans, and the National Marine Fisheries Service, a federal agency. Cheering for the sea lion are animal lovers and the environmental group Greenpeace.

Some want to change the script. They say certain laws dictating how parts are played are wrong. They say the part of the steelhead has been underwritten and the script should be changed to copy another Northwest drama called "Spotted Owl." Think of the fish as another owl, some say.

So far the script goes unchanged, the laughs continue, and that makes the tragedy: As the debate rages, the fish are being killed off with astonishing efficiency. Herschel seemingly cannot be stopped. He has a lifetime contract with the U.S. government.

It's a dilemma. No one seems happy with how the drama is played, yet no one knows a solution acceptable to all players. Impossible as it is, the problem is presented as a test of values and morality in the Northwest: Do we love nature? Can we save Herschel and the fish? Are we savages who solve a problem with bullets?

Can we stop laughing long enough to understand the problem? Back at the beach, Gearin, Ebberts and Jeffries, as scientists, must take one thing at a time. Despite the urgency of the steelhead crisis, they must satisfy standards of deliberateness and precision. On this day, they wanted to know how joined fur and flesh would respond to rubber bullets fired by shotgun, not the sort of question biologists usually care about but potentially key to the Herschel question. Earlier, they tried firing at a pelt, but someone suggested that since a pelt was different than the real thing, the real thing had to be tried. They wanted to know the precise reaction of a quarter-inch hide and its underlay of two to three inches of blubber.

They found that at 20 yards, bullets bounced off the animal. At three yards, bullets lodged in the flesh. From that, the men concluded that it was possible to fire rubber bullets at a sea lion and the creature would live. But consider a accident: Could a ricocheting rubber bullet hit and injure a human bystander? That was key, too. "Humans are notoriously thin-skinned," Jeffries explained later - a remark of particular resonance in the tragicomedy. To get an answer, the State Patrol helped them perform ricochet tests at the patrol's academy, using a pond and a metal coffin.

Now they knew the proper angle for shooting rubber bullets at sea lions. If things got to that point. If the audience would let them.

Except under certain conditions, to kill or even disturb sea lions is a violation of the Marine Mammal Protection Act of 1972. Until Congress changes the law, biologists such as Jeffries must restrict their shooting to dead Herschels, not live ones.

So how do you follow the law and save both steelhead and sea lion, without breaking the law? Here's how it gets silly:

To stop sea lions from eating steelhead, biologists have tried firecrackers, fish laced with repulsive flavors, nets, amplified sounds of sea lion predators and even a program to truck sea lions to Washington's coast.

None of that has worked.

Except as comedy.

The state knows shotguns are safe, but public attitudes can be dangerous. Shooting rubber at living things does have unfortunate associations with Gaza and South Africa. Then there's the noise problem of guns being fired in the city. For now, forget the rubber bullets, state officials decide. The new approach, Jeffries tells a reporter, will be rubber-tipped arrows fired from crossbows. (Actual headline: "MAYBE SEA LIONS WILL GET THE POINT" Ha ha.) Jeffries says he is accurate at anything as far as 33 yards.

"No one has ever shot crossbows at sea lions before," says Jeffries, resigned to what he calls "making fools of ourselves" in the public's eye. "Whatever we do down there will have some quality to it that people won't like, whether it's comic or 'death mongers.' "

None of this is funny, says Greenpeace Action, which acts as a kind of chorus of conscience in the tragicomedy. Greenpeace exhorts Washington State to stand on moral ground. Avoid the dark side, says Greenpeace. Using arrows to thump sea lions is "a crazy idea," says Greenpeace spokeswoman Cynthia Rust. "This is shooting from the hip - literally."

There are no accepted estimates of public dollars spent protecting either sea lions or steelhead. Estimate for one year's effort to keep them apart: $ 160,000.

Meet the star: the California Sea Lion. Typically, the sea lion's favorite meal is squid or hake. Sea lions breed on the Channel Islands off Southern California. Older males and females generally remain in California, while young males roam far. The young males that winter in Seattle at the Ballard Locks collectively have been nicknamed " Herschel. "More than 1,000 sea lions can be found in Puget Sound, but the problem at the locks involves about a dozen

Herschel is smart, fast and dangerous. A cousin of the bear, Herschel can move fast on land or at sea. He has big teeth and can quickly propel his jaws forward by telescoping his neck.

The sea lion up close may smell awful, but at a distance, as he plunges into the froth from fresh water spill at the locks and reemerges with a playful bark, he is cute and lovable. Those large brown eyes turn predator into playmate.

Debbie Thompson wants to play. Standing at the locks, she spots a sea lion breaking the surface. Thompson claps her hands and barks. "It's my favorite animal," she says with a grin. As she claps, a sea lion breaks the surface and turns its head towards her: What a ham. She claps harder, shrieking with joy. It's a great show. You almost expect someone to start selling popcorn.

Herschel has staged a remarkable comeback. Under programs intended to protect fish runs, Washington and Oregon allowed or even encouraged the killing of seals and sea lions. Washington's program ended in the 1960s, Oregon's in 1972. Today there are 177,000 sea lions, compared with a 1975 count of 27,000.

The population of sea lions grows annually by six percent. Sea lions were first spotted in Puget Sound in 1950 and were first noticed eating fish at the locks in 1970. Harassment of sea lions began there in 1985.

Herschel last year devoured 65 percent of the wild steelhead trying to enter Lake Washington. (This does not count the amount of fish taken on Puget Sound rivers by sea lions, a problem said to be growing.) Herschel catches fish as they bunch up at the locks and search by smell for the scent of the rivers of their birth. A fish ladder near the locks provides a series of 21 steps that provide a gradual ascent from Puget Sound to fresh water. The delay gives Herschel his edge over the fish.

Meet the victim, one of the greatest sport fish in North America, a creature of renown power, romance and mystery.

"When you hook one, all of a sudden you feel overmatched," says Rod Belcher, a steelheader since 1963. "It's something too powerful for your gear and talents." Just looking at one gives him pleasure. "They're one of nature's beautiful designs. They look powerful and sleek, everything that a combatant should be in a fish," he says.

Rob Christian caught one three years ago on a bend of the Cedar River beside the Maple Valley highway. "That one fish I caught was the greatest high I've ever had. That day I was all alone and after I caught it I ran up the bank, screaming my head off. It was so great," says Christian, the memory flooding him with pleasure.

"I live for that."

The wild steelhead is not just a treasured wild sportfish, but a local resident that is possibly unique in North America. The state Department of Wildlife says the run through Lake Washington may be North America's only substantial run of wild steelhead through an urban habitat. Developers have erected French-style homes on the banks of Issaquah Creek, where steelhead spawn, but the fish survives.

Once the wild run is gone, says the state, the surviving steelhead will be hatchery fish whose gene pool is less diverse and therefore more vulnerable to disease. Gone forever will be an original resident of King County.

At least, that's how the state sees it. The wild steelhead is a myth, says Ben Deeble, Greenpeace's ocean-ecology campaigner. "Any such characterization of this steelhead run as genetically unique is either ignorant, naive or fraudulent," he says. Since 1914, 1 million steelhead have been introduced to Lake Washington from other river systems, he says. That means the steelhead seen today are "genetically mixed. The original fish, what I would call wild, have been gone for a long, long time and it had nothing to do with sea lions."

In reply, state biologists say interbreeding among hatchery and wild steelhead has been minimal. They have no doubt on that point, but admit they lack proof. Proof would cost money they don't have, and time that Herschel won't give. A thorough genetic screening of the wild steelhead would cost $ 32,000 to $ 43,000 and take several years.

In his Snohomish County office next to North Creek, a stream that is home to 46 steelhead, Bob Byrne hands you a business card that says State of Washington Department of Game. That's a mistake, he says. It's now the Department of Wildlife.

The department is changing its public image, from an agency seen as turning hunters loose to bag the big ones to a group devoted to conservation. But resting neck-down on Byrne's desk is a reminder of that old image. The eyes of a large mule deer, frozen open by the hand of the taxidermist, stare upward as Byrne speaks.

Byrne is the person charged with explaining the silliness to the public. His job is to explain why scientists chase sea lions with firecrackers. He is so practiced at the Herschel drama that he can almost make sense of it all. To appreciate all the subtleties, he says, you have to understand state and federal legislation, fish genetics, hydraulic engineering at the locks, a lost river that once drained Lake Washington, the intelligence of the sea lion, the magnificence of the steelhead and the contradictory messages shouted from the peanut gallery. On one end of public opinion is the animal lovers. Do no harm. Love the sea lions, they say. On the other end is many fisherman whose brows furrow at mere mention of Herschel. Waste him, says the King County Outdoor Sports Council, a group of 28 sports clubs.

It's hard to find a middle ground.

Mixing his metaphors a bit, Byrne says, "We're operating in a value soup in a fishbowl." It pains him that Herschel has outclassed the steelhead in the public-relations contest. "People don't realize how wonderful that fish is," he says. "It's the 'cold slimy fish' against warm, fuzzy sea lions." Stuck to the wall above his head is a newspaper clipping that depicts Herschel as cute and smilihg.

"It's no longer a funny issue," says Byrne. "We're serious about protecting this run. We not only have a legal obligation, but a moral obligation to protect this fish."

Like all fish dramas in the state, this one took root in the 1850s, when territorial Gov. Isaac Stevens was promising tribes the eternal right to fish in their usual and accustomed places. One hundred and twenty-four years later, District Court Judge George Boldt made that promise stick, assigning to treaty Indians half of the harvestable catch. Like the sea lion, the Native American fisherman enjoyed a strong protector.

About the time Stevens was signing paper with Indians, perhaps as many as 5,000 steelhead annually entered Lake Washington, but no one is certain of the number. Also at that time, Army Captain George McClellan got an idea: a canal between Lake Washington and Puget Sound that would "create the finest naval resort in the world." Congress authorized money in 1906.

The locks opened in 1916. Building the locks not only had an astonishing effect on maritime trade, it devastated fish runs, eliminated traditional Native American fishing grounds, and created a perfect environment for Herschel to catch fish. To join lakes Union and Washington, the Corps of Engineers lowered the larger lake by almost nine feet. That caused Lake Washington's southern outlet through the Black and Duwamish Rivers to cease to exist. The Black River, where Native Americans had camped for thousands of years, simply dried up and removed the steelhead's passage to the sea. The Cedar River switched its drainage from the Duwamish to Lake Washington and now goes between a Boeing Co. plant and the Renton airport. For fish, the locks became their route to Puget Sound.

The return trip is the problem. Greenpeace, which calls the locks "an offense against nature," wants the state to build some sort of underwater barricade on the salt water side, something tight enough to block sea lions, but wide enough to pass fish. State biologists say experiments with nets showed that sea lions are smart enough to position themselves at the front of any barrier, but the idea will get further study.

Study, of course, means delay as Herschel consumes.

When the locks created problems for fish, they also created problems for Native Americans, whose role in the Herschel drama has been unseen but critical.

After Boldt's decision, two tribes, the Muckleshoots and Suquamish, were assigned fishing rights around the locks. Their combined catch of wild and hatchery steelhead this season was 80 fish. Preseason estimates predicted Indians would harvest 478 wild and hatchery fish, compared with the harvest by sea lions of 1,754 steelhead.

Walter Pacheco, Muckleshoot member and the tribe's fisheries manager, calls the sea lion a nuisance animal. Some days, sea lions are so aggressive that they snap at a fish as it's pulled from a net, he says.

"There have been a number of methods tried to control predation," Pacheco says. "If there are no nonlethal means of control, then we would not have a problem with lethal removal."

Given their unique legal status, Native Americans could step forward and demand protection for the steelhead. Wildlife Director Curt Smitch fears that the U.S. Department of the Interior, acting for tribal members, could sue the state for failure to protect steelhead. That would put two federal agencies on opposite sides, with the state caught in the middle, says Smitch.

It horrified children around the world: Men walking the ice in the North Atlantic were clubbing thousands of baby harp seals. The hunters wanted pelts. The outraged public wanted laws.

When Congress passed the Marine Mammal Act, they unwittingly wrote the Herschel Tragicomedy of Ballard. The goal then, of course, was to help seal pups, porpoises, whales and other creatures. But specifying how mammals should be protected posed problems. First, there was little knowledge about marine mammals. And there was no way of knowing when mammal population, given protection, would exceed natural limits.

The act made it illegal to harass, hunt, capture, or kill any marine mammal, but exempted commercial fishermen who need to protect gear or catch. No such exemption was specified for fisheries managers. If there was any doubt as to which was more important, fisheries or mammal protection, Rep. John Dingell, D-Mich., had an answer: "The protection of fish and shell fish is secondary."

What was Congress thinking? "It's not clear whether they imagined the repercussions of this legislation," says Joe Scordino, resource management specialist with National Marine Fisheries Service. In 1988, the mammal act came up for reauthorization and some groups, including the Pacific Marine Fisheries Commission, pushed for an amendment to allow killing of sea lions to protect fish runs. But rather than amend the law, and thereby create a fierce battle between environmentalists and fishing groups, Congress declared a five-year period to study the problem.

One man intimately involved in writing the act says no amendment is needed. John Hussey, former legal counsel to the Senate subcommittee that helped write the mammal act, says killing already is permitted to protect fisheries. Given that California sea lions are so numerous, they clearly are not endangered, he said. Employees of the National Marine Fisheries

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Service "are hiding behind the act to avoid confrontation with animal rights activists," said Hussey, now vice president of a food corporation.

One day in February, the state and feds called a press conference to give an update on the Herschel story. Speaking were Smitch, the state official, and Rolland Schmitten, regional director for the National Marine Fisheries Service. The bearded Smitch looked tired and rumpled. Schmitten, crisply dressed in a blue suit, wore a little pin in his lapel that said National Oceanic and Atmospheric Administration. NOAA is the parent agency of the fisheries service. Word had gotten out that the press conference was about a new program to truck about 10 sea lions from the locks to California. The remaining sea lions would be harassed with crossbows and firecrackers. The announcement made for great Ha-Ha on the evening news. Reporters played their role. "I don't know anything about fish or about anything," said one reporter. "Why don't you just lift the fish over the locks?" Smitch and Schmitten were patient.

Then, almost as an aside, Schmitten mentioned that the state had asked him to publish a question in the Federal Register. Not that anyone wanted to kill Herschel, but the state wanted information as to restrictions on "lethal removal" by the Marine Mammal Act.

The comment jolted one member of the audience, Rust, of Greenpeace. Although the press kept asking about funny stuff, Rust knew the state was starting a process to allow the killing Herschel, the first such request ever made under the act. If authority was granted, the killing could begin in time for the run next winter.

Rust went back to her office and began preparations for a national battle. Rust, who dropped out of a well-paying job in corporate marketing to join Greenpeace, said environmentalists around the country would not allow Washington State to kill a mammal. That would be a clear violation of the spirit of the marine mammal act, she says.

Unfortunately for Greenpeace, the more it gets into the fight, the more some think Greenpeace does not care about fish. In fact, Greenpeace has been a major foe of driftnet fishing and polluters.

That's a cruel aspect to the Herschel drama. The contrasting roles assigned to players creates false images to the audience: Greenpeace hates fish and state biologists are killers. The national fisheries service, which prosecutes people who bother marine mammals, doesn't care about mammals.

Herschel has created tension between Greenpeace and government biologists, who often are allies. Rust sounds depressed. The idea that this state would consider killing sea lions, she said, is "a sad commentary on what kind of people we are in the Northwest."

The Herschel story is not funny, she was saying. It's a moral issue.

Which is what the people who might kill Herschel would say.

Herschel is not funny.

THE WASHINGTON POST

February 17, 1990, Saturday

PESKY SEA LIONS' BITE IS WORSE THAN THEIR BARK

O. Casey Corr, Special to The Washington Post

Protected by an act of Congress, the California sea lion is a mass of blubber and fur that streaks through water with astonishing grace, breaks the surface and barks playfully at children and tourists. Despite such charm, many people here would rather see the animals dead.

Each winter, young males leave breeding grounds in Southern California and swim to Seattle. In the heart of the city, they prey on a run of wild steelhead trout at Ballard Locks, where the fish leave Puget Sound and enter the Lake Washington river system to seek spawning grounds.

According to state biologists, the sea lions soon may wipe out one of few large steelhead trout runs in a North American city.

Incensed about the fate of this sport fish of legendary power and unpredictability, not to mention great taste, the traditionally potent fishermen's lobby in Washington state has asked the government to sanction the killing of sea lions.

But the Marine Mammal Protection Act of 1972 forbids disturbing or killing a sea lion, except under strict conditions. A fisherman may kill one that threatens catch or gear, but there is no exemption for biologists trying to protect entire fish runs, according to the state.

To stop sea lions from eating steelhead at the locks, state and federal biologists have dropped firecrackers into the water, tossed in dead steelhead laced with flavorings that taste awful and played sounds of killer whales. The sea lions quickly learned to ignore distractions. Nothing has worked, except as material for humor columns and network newscasts.

The latest strategy is to capture sea lions and haul them away. But, when state and federal officials took 37 to the Washington coast last year, 29 were back at the locks within 15 days. A trucking program to California, to begin this month at a cost of $ 15,000, is to be paired with a technique that biologists call "tactile harassment." It involves using crossbows to fire rubber-tipped arrows and began this week.

Bob Byrne, spokesman for the state wildlife department, said hoots and chuckles aimed at the biologists' tactics are obscuring a serious problem. "It's no longer a funny issue," he said.

"We're serious about protecting this run. We not only have a legal obligation but a moral obligation to protect this fish."

Nevertheless, publicity about the problem keeps giving the human-interest edge to the sea lions, which collectively have been nicknamed "Herschel." "People don't realize how wonderful that fish is," Byrne said. "It's the 'cold slimy fish' against warm, fuzzy sea lions."

John de Yonge, an avid Seattle fisherman, said that catching a steelhead trout "is better than sex" and that sea lions at the locks should be shot. Public sympathy, he said, would be much different if Herschel's victims were "bunny rabbits."

As one might expect, the environmental group Greenpeace is playing a prominent role, threatening to generate a national uproar if a single sea lion is harmed. Cynthia Rust, a spokesman for the group's local chapter, said her national headquarters first saw the sea lion problem as insignificant but now regards it as a test of the Bush administration's commitment to the Marine Mammal Act, which also protects whales, porpoises, seals and other mammals.

Rust said firecrackers and trucking are not permanent solutions, a point conceded by state and federal authorities, who said they at least have given some steelhead time to escape their predators and enter Lake Washington. Greenpeace suggested building an underwater barrier to block the sea lions from pursuing fish as they approach the locks. State biologists expressed doubt that it would work but are studying it with the Army Corps of Engineers, which operates the locks.

Before the Marine Mammal Act, Oregon and Washington encouraged or even financed the killing of seals and sea lions, which were seen as a threat to fish runs and fishermen's incomes. In 1975, there were 27,000 California sea lions, wildlife authorities said. Today, there are 177,000, and the figure grows by 6 percent a year. Harassment of the 40 to 60 sea lions that usually eat steelhead at the locks began in 1985 in a program sponsored by the state and the National Marine Fisheries Service, enforcer of the mammal act.

For Lake Washington's steelhead to survive, 76 percent of fish approaching the locks must be able to move upriver to spawn, according to the state. Sea lions, however, ate 65 percent of the steelhead last year and are expected to consume 59 percent of about 2,000 steelhead approaching the locks this year. The fish are intercepted as they bunch at the locks and search for the scent of rivers where they were hatched. Some sea lions even position themselves at the entrance to the lock ladder, water steps that allow fish to ascend from sound to lake.

Last December, the fisheries service sought approval of the trucking program by the California Coastal Commission, a state agency with federally delegated powers. Pressured by California fishing groups, the panel rejected a plan to truck as many as 60 sea lions, but it is expected to approve a scaled-back program involving up to 10 tagged with radio locators. Rolland Schmitten, regional director of the fisheries service, said he would proceed with the trucking program even if California objected.

Zeke Grader, executive director of the Pacific Coast Federation of Fishermen's Association, said he dropped his opposition because 10 sea lions probably would not cause significant damage to fish runs in California, where sea lions pose a serious problem. He said he feared that the trucked-in sea lions would teach their brethren new ways to catch fish. "If they do any damage, fisherman probably could use lethal means to remove them, which ironically [the fisheries service] couldn't do," Grader said.

A former Seattle resident, Grader suggested that the service paint the trucked sea lions with a big "W" in purple and gold, the colors of the University of Washington. But he said he was told that the paint might irritate their skin.

UPSICEL Unit Two, Lesson 1
T-Chart Worksheet - Handout

T - CHART

IDENTIFY THE PROBLEM:

FACTS IN FAVOR OF THE STEELHEAD	FACTS IN FAVOR OF THE SEA LION

LESSON 2

OBJECTIVES:

1. The students will analyze the concept of procedural justice ("due process") by:

   a. identifying the unfair decisions by the ruler in a play,
   b. stating the procedural guarantees that ought to be included in a Bill of Rights,
   c. comparing their list to the procedural guarantees provided by the U.S. Constitution,
   d. concluding that procedural fairness is an essential element of the Bill of Rights.

SOURCE:

Adapted from Reinehr, Fran, The Bill of Rights, A Law Related Curriculum for Grades 4-6, Unit III, Lesson 7, **The Bill of Rights in Nebraska Project**, pp. 27-35, 1986. Used with permission.

MATERIALS:

*Student copies of the play
*6-10 copies of Rights Activity Sheet
*Markers and poster paper
*Due Process Worksheet

PRIOR TO LESSON:

1. Read synopses of each act in the play.

2. Prepare materials.

PROCEDURES:

3. Assign parts in the plays randomly (there are 19 speaking parts.) Pass out markers and poster paper to the students who do not have speaking parts. Instruct the students with speaking parts to get into groups and practice (either act it out or use reader's theater.) Assign students without parts the task of making posters illustrating the rights listed on the Rights Activity Sheet.

4. Read or act out Act 1.

5. Ask the students to retell the story in their own words. Once it is clear they understand the story ask them whether they think the ruler acted fairly.

6. Ask the students to list the things the ruler did that were fair and unfair and why he/she was fair or unfair.

7. Compile a list of fair and unfair actions on the overhead or on butcher paper. Pass out the Handout and ask the students to keep their own list on the Due Process Worksheet.

8. Repeat steps 4-7 for Acts 2, 3, and 4 of the play.

9. Remind the class that at the end of Act 4 the ruler was overthrown. The people now want to put together a Bill of Rights that will protect them from unfair procedures in the future.

10. Instruct students to get into small groups and draw up a list of rights that would guarantee a fair judicial system for the Land of Faircastle, using as a guide the list of unfair actions from their worksheets.

11. Ask the students who created posters for the Rights to each present their poster. Hang in the front of the room.

12. Tell the students to compare the rights on their lists to the rights on the posters, and on the Rights Activity Sheets.

13. Ask the class whether it would be adequate to have a Bill of Rights that provided for freedom of speech and religion, but did not contain the rights that guaranteed fair procedures. Discuss.

EXTENSION: Arrange for the class to visit a court and see a trial in progress.

SYNOPSES OF THE CASES IN THE PLAY

ACT 1. THE CROWN AGAINST RED SMITHY

Lady Violet brings 15-year-old charges for assault against the defendant, Red Smithy. Because the case is so old, all the other witnesses are dead or no longer in the kingdom and the physical evidence, Lady Violet's bruised legs, healed years ago. The defendant cannot defend himself because he cannot even remember the incident. The defendant is found guilty. It is unfair to make one defend himself against stale charges. That is one reason why the Sixth Amendment requires a speedy trial. It also requires that the trial be public, so the people can see whether justice is done.

ACT 2. THE CROWN AGAINST OLD STOUTHEART

Old Stoutheart has been accused of pulling a chair out from under the court jester, Funnyfellow, injuring him. The Royal Jury found Stoutheart innocent as there was no evidence that he did what he was accused of doing. The monarch was quite upset by this and he/she dismissed the jury. People in the kingdom will no longer be tried by their peers, but by the ruler him/herself. Even though Stoutheart has been found not guilty, the ruler wishes to try him again, to make him again go through the trauma and expense of a trial. The Fifth Amendment says people should not be "twice put in jeopardy," to protect them from such harassment. An additional concern is that repeated trial strengthens the confidence of witnesses as they tell their stories over and over. The first time they might not be sure the accused is the defendant; the next time the defendant looks more familiar.

Stoutheart is pressured to confess by being repeatedly called into Court. When that does not work, the ruler increases the pressure by threatening to imprison Stoutheart's five- year-old granddaughter. This finally forces Stoutheart to confess, even though he is innocent. The Fifth Amendment says one cannot be forced or coerced to testify against oneself. This prevents law enforcement and judicial officials from placing that kind of pressure on accused criminals. As in this case, such coerced confessions are not reliable. An even more blatant abuse would be torturing the suspect until he or she confesses. The Fifth Amendment permits only the use of truly voluntary confessions.

ACT 3. THE CROWN AGAINST SIR WINALOT

Lord Lottaland accuses the knight, Sir Winalot, of stealing his horse. Sir Winalot has a bill of sale to prove that he bought the horse, but this does not matter to the ruler once he/she realizes that Sir Winalot was the knight who recently defeated the monarch's son in a jousting tournament. The monarch is a biased decision maker. The right to a fair trial in front of a neutral, unbiased judge or jury is a basic due process protection inherent in the Fifth and Sixth Amendments.

ACT 4. THE CROWN AGAINST LINDA LILY

Roxanne Rose accuses Linda Lily of punching her in the nose. The monarch finds Lily guilty even though she is not present. The Sixth Amendment says people have a right to be told what they have been accused of doing and to face their accusers and subject them to questioning in court. Lily did get some sort of notice of the charges against her, but she had received it only that morning and could not read it. One needs time to prepare a defense (the trial here is too speedy) and the Sixth Amendment guarantees the assistance of a lawyer. The Supreme Court, in the famous Gideon case, said that if anyone accused of a serious crime cannot afford an attorney, the state must supply one. Today, anyone accused of a crime that might result in jail time has a right to an attorney at state's expense if they are too poor to hire one.

Even though Lily has a defense, the monarch refuses to listen. After Lily insults the monarch, he/she orders the bailiff to jail Lily and throw the key away. Here, as in many other sentences, the punishment is unduly harsh. The Eighth Amendment forbids cruel and unusual punishments and due process requires that the punishment fit the crime.

DUE PROCESS DENIED
OR
FAIRNESS IN THE LAND OF FAIRCASTLE

A PLAY IN FOUR ACTS

ACT 1. THE CROWN AGAINST RED SMITHY

Cast of Characters
Narrator
Bailiff (person who helps run the court)
King/Queen
Lady Violet
Red Smithy

NARRATOR: This Friday, as on every Friday morning, the ruling monarch of the Land of Faircastle is about to open the Faircastle High Court of Justice. The ruler is the only member of the Court.

BAILIFF: Hear ye! Hear ye! The Great Chief and Only Justice of the Land of Faircastle is about to open the Court for the business of the day.

K/QUEEN: Bring on the first case.

BAILIFF: The first case is The Crown against Red Smithy. The victim is Lady Violet.

K/QUEEN: State your case, Lady Violet.

LADY V: Fifteen years ago I was injured when Red Smithy, then 12 years old and learning how to be a blacksmith, let a barrel of horseshoe nails roll over my legs, badly bruising them.

K/QUEEN: Why did you wait so long to bring this case before me?

LADY V: When I was injured Red Smithy was only 12 years old. He had few customers. Now he is doing so well that he is taking business away from my own true love, Pureheart Smithy.

K/QUEEN: Is there anyone else who saw the terrible bruises?

LADY V: Oh yes, Your Majesty.

K/QUEEN: Well, bring them to court as witnesses.

LADY V: I cannot do that, Your Royal Highness. My mother is now dead and my best friend Elaine Roundhead has moved to the colonies. There is no way after so much time to bring in my witnesses.

K/QUEEN: Well then, let's hear from the blacksmith, Red Smithy. What do you have to say?

SMITHY: That was many years ago. I don't remember causing injury to Lady Violet.

K/QUEEN: Lady Violet has brought serious charges against you, Red Smithy, and you do not deny them, you only say you don't remember. I find you guilty of injuring Lady Violet and order that you spend ten years in prison.

ACT 2. THE CROWN AGAINST OLD STOUTHEART

Cast of Characters
King/Queen
Bailiff
Old Stoutheart
Tiny Stoutheart
Narrator

K/QUEEN: Bailiff, call the next case.

BAILIFF: The next case is The Crown against Old Stoutheart. The victim is Funnyfellow, the Court Jester.

K/QUEEN: Yes, I know this case well. Every Friday I order Old Stoutheart to the Court to answer to the charge that he caused Funnyfellow, the Royal Jester, to fall to the floor by removing Funnyfellow's chair as he was about to sit down.

OLD ST: That is right, Your Majesty. You make me come here every Friday even though the Royal Jury found that I was not guilty because there was no evidence that I pulled the chair out from under Funnyfellow.

K/QUEEN: Yes, that is why the Royal Jury is no more. The Court Jester was injured and unable to work for a whole month, leaving the Royal Court without laughter. Someone must pay for such a nasty crime. So we are waiting for you to confess--patiently waiting, I might add.

OLD ST: I will not confess. I did not do it. I am merely trying to make a living as a baker and it is not easy when I spend every Friday morning in the Court. If I were not such an honest man I would confess just so I could continue to make a living.

K/QUEEN: Aha! Did you say you confess?

OLD ST: No, a thousand times no! I didn't do it! I will not confess!

K/QUEEN: We'll see about that. Bailiff call the next case, heh, heh.

BAILIFF: The Crown against Tiny Stoutheart.

NARRATOR: The bailiff enters the room with Tiny Stoutheart, a five year old girl.

TINY ST: No, you cannot do this to me. I have done nothing wrong.

BAILIFF: Your Majesty, on your order Tiny Stoutheart is charged with injuring the Royal Jester. She will be put in jail unless she can prove her innocence.

OLD ST: No, wait! If you are so anxious to arrest someone that you would put my little granddaughter in prison, I will confess. I hurt the Royal Jester.

TINY ST: But Grandpa you did not! I know you didn't. That was the day you took me to the Royal Zoo.

OLD ST: Hush, girl. It is for the best. I confess.

K/QUEEN: Old Stoutheart has confessed to injuring Funnyfellow, the Royal Jester, and depriving the Royal family of laughter. I order him to give me his bakery and sentence him to spend twenty years in prison. Take him away.

ACT 3. THE CROWN AGAINST SIR WINALOT

Cast of Characters
King/Queen
Bailiff
Lord Lottaland
Sir Winalot

K/QUEEN: Bailiff, bring in the next case.

BAILIFF: The Crown against Sir Winalot. The victim is Lord Lottaland.

K/QUEEN: Lord Lottaland, what is your charge?

LOTTA: The knight, Sir Winalot, stole my horse, Aksarben.

K/QUEEN: What say you, Sir Winalot.

WINALOT: Aksarben is my horse. I bought him last year from Lord Lottaland, Here is the bill of sale signed by Lord Lottaland.

LOTTA: Your Majesty, I remind you that Sir Winalot was the winner of the royal jousting tournament in which he defeated your son, Sir Neverwin.

K/QUEEN: Why that's right. I so wanted my son to win. Sir Winalot, I find you guilty as charged. You must turn over your horse---ah, I mean Lord Lottaland's horse---to him, and you are to be put in prison for the entire jousting season and for the next 30 jousting seasons to come.

ACT 4. THE CROWN AGAINST LINDA LILY

Cast of Characters
King/Queen
Bailiff
Roxanne Rose
Linda Lily
Narrator

K/QUEEN: I hope we are done now.

BAILIFF: Just one more case, your Royal Judgeship. It looks like a short one.

K/QUEEN: Okay, okay. Bring it on.

BAILIFF: The Crown against Linda Lily. The victim is Roxanne Rose.

K/QUEEN: Ms. Rose, what is your charge? Make it snappy. I'm in a hurry.

ROSE: (Holding a handkerchief to her nose) Your Majesty, two days ago Linda Lily punched me in the nose causing me great pain. You can see how bruised my nose is.

K/QUEEN: Yes, yes, I see. Where is Ms. Lily?

BAILIFF: She is not here, Your Majesty.

K/QUEEN: Good, that makes it easy. I find her guilty and order her to spend one year in prison. Arrest her immediately.

NARRATOR: The bailiff goes to arrest Linda Lily. A few minutes later Linda Lily comes running into court, the bailiff following after her.

LILY: Your Majesty, why did you have me arrested?

K/QUEEN: Roxanne Rose said you punched her in the nose. You were not here to defend yourself. Did you not receive an order to appear in court?

LILY: I did get a piece of paper early this morning, but I did not understand it. It was written in Latin and I am a poor woman who cannot afford to hire someone to help me.

K/QUEEN: Too bad. I have already decided you are guilty.

LILY: But, Your Majesty, while it is true I punched Roxanne Rose in the nose, I did it to defend myself. She was going to hit me because I just got the job of helper to the royal gardener, instead of her.

K/QUEEN: You will not be gardening, you will be spending a year in jail. You have had your trial and I found you guilty.

LILY: (Angrily) This court is a joke. You should be the Royal Jester.

K/QUEEN: Bailiff, lock her up and throw away the key.

NARRATOR: The people of Faircastle got so tired of the Royal Ruler and the Court's unfair decisions that they overthrew the ruler and set up a new government. But they had a hard job ahead of them. They needed to write a Bill of Rights. What are the rights that the people of Faircastle should have to prevent unfair decisions like to ones we just saw?

BASIC PROCEDURAL RIGHTS GUARANTEED BY THE BILL OF RIGHTS TO INDIVIDUALS ACCUSED OF CRIMES

The Bill of Rights guarantees residents of this country certain procedural rights:

YOU HAVE THE RIGHT TO REFUSE TO TESTIFY AGAINST YOURSELF. (5th Amendment)

YOU CANNOT BE TRIED FOR THE SAME CRIME TWICE. (5th Amendment)

YOU HAVE THE RIGHT TO A SPEEDY TRIAL. (6th Amendment)

YOU HAVE THE RIGHT TO A PUBLIC TRIAL. (6th Amendment)

YOU HAVE THE RIGHT TO BE INFORMED OF THE CHARGES AGAINST YOU. (6th Amendment)

YOU HAVE THE RIGHT TO FACE THOSE WHO ACCUSE YOU. (6th Amendment)

YOU HAVE THE RIGHT TO COUNSEL (A LAWYER) FOR YOUR DEFENSE. (6th Amendment)

YOU HAVE THE RIGHT TO TRIAL BY JURY. (6th Amendment)

YOU HAVE THE RIGHT TO REASONABLE BAIL, FINES, AND PUNISHMENT. (8th Amendment)

YOU HAVE THE RIGHT NOT TO LOSE YOUR LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. (5th and 14th Amendments)

UPSICEL Unit Two, Lesson 2
Due Process Worksheet Handout

DUE PROCESS PROVIDED

WAYS KING/QUEEN WAS FAIR	RIGHT NEEDED TO PROTECT PEOPLE	AMENDMENT IN U.S. CONSTITUTION

DUE PROCESS DENIED

WAYS KING/QUEEN WAS UNFAIR	RIGHT NEEDED TO PROTECT PEOPLE	AMENDMENT IN U.S. CONSTITUTION

LESSON THREE

OBJECTIVES:

1. The students will explain the purpose of trial procedures.
2. The students will describe at least one alternative to the trial process.
3. The students will identify the major steps in a trial.
4. The students will name the parties to a case in both a civil and a criminal trial.
5. The students will explain the roles of players in a trial.

OUTSIDE RESOURCE PERSON:

Attorney or law student (optional)

MATERIALS:

*Handout, "The Trial Process"
*Worksheet, "The Trial Process"

PRIOR TO THE LESSON:

1. Run copies of the handout and the worksheet for each student.

PROCEDURES:

2. Pass out handout and worksheet. Ask the students to read silently the handout, "The Trial Process" and to fill in the worksheet the best they can in the time allotted. Stress that no student is expected to complete the worksheet in the time given.

Give a reasonable amount of time for the attention span of your class, approximately 10 to 20 minutes.

3. Ask students to compare answers in groups. Fill in any blanks. Discuss differing answers. Stress that no group is expected to complete the worksheet in the time given.

Give a reasonable amount of time, approximately 5 to 10 minutes.

4. Read the first section of the handout, "The Trial Process" aloud. Ask students for their responses on the worksheet which correlate to that section. Continue on section by section. Discuss each section until comprehension is verified.

EXTENSION: Ask the students to work in groups to make up a game to teach the trial process and players to other students who haven't read the handout.

THE TRIAL PROCESS

THE PURPOSE

We declared our independence from England over two hundred years ago. At that time we said every person has a free and equal opportunity to pursue life, liberty and happiness. Sometimes one person's pursuit of happiness interferes with another person's. To help with the conflicts this interference can cause, the citizens of this country agreed to certain guidelines for their behavior. These guidelines are what make up our system of laws.

The reasons for conflicts between persons vary. A person might not know or understand the law. A person might choose to deliberately break a law. Laws do not cover every possible situation.

Sometimes one individual comes into conflict with another individual. Sometimes the conflict is between an individual and the government. At other times an individual may offend the general will of the people.

These disputes need to be settled in a way that fits the democratic principles of our society. The resolution might be stating the rights of both parties; determining guilt or innocence; directing one person to make up for harming another; or imposing a fine or sentence as punishment for breaking the law.

A trial is one way to settle disputes. However, going to court usually should be the last resort. People should try to work out their problems. Three common ways of settling disputes without going to court are:

1) negotiation-the parties talk face to face
2) mediation-the parties talk with the help of a third person called a "mediator" who helps them find a common ground on which they can agree to a solution
3) arbitration-a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by

When these methods fail, parties in dispute sometimes go to trial to find a solution. A trial is called an "adversary process." This means that two or more persons who are in conflict present their arguments and evidence before a third party who is not involved in the dispute. This third party makes a decision. The third party can be a judge only or a judge and a jury. Their job is to be the "trier of fact."

THE PARTIES

A trial revolves around an argument involving two or more people. The people who bring their argument to trial are called the **"parties"** to the case.

In a **civil** trial, one person is complaining about something another person did or failed to do. The person who does the complaining is called the **"plaintiff."** The person he/she is complaining about is called the **"defendant."**

In a criminal trial, the government through its lawyer called a **"prosecutor"** accuses a person of a particular act which the law calls a crime, such as murder or robbery. (In Washington State, the prosecutor is also called a plaintiff.) The prosecutor speaks on behalf of the government, which represents the people of the state or nation. The person accused of the crime is called the **"defendant."**

Usually both parties will hire lawyers and instruct them to prepare the case and make arguments for them in court.

THE FACTS OF THE CASE

Long before the trial actually happens, some argument or incident occurred. The argument or incident involves many facts, which together make up the **"case."** Persons on opposite sides of a case often will view facts quite differently. This disagreement over the facts forms the basis for what is to be decided at trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the judge (when there is no jury) or jury is to decide which facts are correct.

THE EVIDENCE

The judge or jury often needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called **"evidence."**

Evidence may take several forms including:

Testimony	A person, called a **"witness,"** tells the court what he/she saw, heard, did, or experienced in relation to the incident in question.
Documents	Letters, notes, deeds, bills, receipts, etc. that provide information about the case
Physical Evidence	Articles such as weapons, drugs, clothing, etc. that can provide clues to the facts

Expert Testimony
A person who was not involved in the incident who can give medical, scientific, or other instruction to the judge or jury to help understand the facts of the case.

THE BURDEN OF PROOF

There is a rule called the "burden of proof." In a civil case, the person doing the complaining has the burden of proof. This means he/she must convince the judge or jury that the facts are correct by a "preponderance of the evidence," meaning that they put in enough evidence so that the judge or jury believes their version of what happened is more likely than not -- more than 50 %.

In a criminal case, the burden of proof is much stricter, because the defendant may go to prison if found guilty. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some say this means the judge or jury must be at least 95% sure that the prosecutor is correct.

0% 50% | | 100%
Preponderance
Beyond Reasonable Doubt

THE DEFENSE

The complaining or accusing parties usually have the burden of proving their particular version of the facts. If the plaintiff fails to put in enough evidence, the defendant wins without having to say anything. Usually, though, the defense presents evidence to prevent the plaintiff from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party.

In criminal cases, defendants may try to establish their innocence by claiming a defense:

1) presenting evidence to show the defendant was not present at the scene of the crime (called an **"alibi."**)
2) showing that the defendant was acting to protect himself/herself (self-defense).
3) presenting evidence showing that the defendant, as a result of a mental defect, was unable to tell right from wrong at the time of the crime (insanity defense.)
4) showing evidence that the defendant faced circumstances that required a violation of the law to protect his or her life or health in a reasonable manner and that there was no other acceptable choice (necessity).

PREPARATION FOR THE TRIAL

Attorneys are responsible for collecting all the evidence that supports the side of the case they are representing and for deciding how to use that evidence at the trial.

In general, there should not be any surprises at the trial. In civil trials, opposing attorneys must tell the other side when asked what evidence they have collected. In criminal cases, prosecutors must reveal to the defendant any evidence that could assist the defense. This makes sure the trial is fair.

****

If this lesson is too long for your students, break here and finish during your next class session.

****

STEPS IN A TRIAL

1. **Opening of the Court**-The clerk of the court opens the court by announcing that the court is ready to begin. He or she also introduces the judge.

2. **Swearing in the Jury**-The clerk of the court or the judge asks the jurors to take their seats. He or she then asks them to swear that they will act fairly in listening to the case.

   The Judge asks Counsel (the attorneys) to introduce themselves.

3. **Opening Statement by the Prosecuting Attorney**-This lawyer begins by telling the jury the important information about the case. This includes the parties in the case and the facts that led to the lawsuit. The prosecuting attorney presents the prosecutor's side of the case to the jury.

4. **Opening Statement by the Defense Attorney**-This lawyer begins by stating his or her name and the defendant's name. The jury is told that he or she will try to prove that the prosecutor does not have a valid case. The defense attorney then presents the defendant's side of the case to the jury.

5. **Prosecution's Direct Examination of Witnesses**-The prosecuting attorney calls the witnesses for the prosecution one at a time to the front of the room. The clerk of court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer.

   Each witness may then be cross-examined by defense counsel. During cross-examination, an attorney tries to get the other side's witness to admit something that will help his or her client. The attorney may also try to show that a witness should not be believed.

6. **Defense Direct Examination of Witnesses**-The defense attorney calls the witnesses for the defense one at a time to the front of the room. The clerk of court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer. The prosecutor then has an opportunity to cross-examine.

7. **Judge's Instructions to the Jury**-The judge explains to the jury what the principles of law are in this case. He or she asks the jury to make a fair decision about the case.

8. **Closing Arguments**-Each attorney sums up the main points that help his or her client's case and argues why their side should win. The prosecutor is the first to present the closing argument, then defense. The prosecutor but not the defense, has the chance to speak a second time, called rebuttal argument. This is because the prosecutor has the burden of proof.

9. **Verdict**-The jury talks about and makes a decision in the case. In a real trial, the jury leaves the courtroom to reach a verdict. For this mock trial, the jury should talk about the case and come to a decision in front of the rest of the class. All jurors must agree on guilt or innocence. If they fail to reach agreement, it is a "hung jury."

UPSICEL Unit Two, Lesson 3
Worksheet

NAME____

1. What is the purpose of a trial?

2. Describe at least one alternative to the trial process.

3. Place the following steps in a trial in order:

1.______	a. closing argument by prosecutor
2.______	b. opening statement by prosecutor
3.______	c. closing argument by defendant
4.______	d. opening statement by defendant
5.______	e. cross examination of prosecutor's witnesses
6.______	f. direct examination of prosecutor's witnesses
7.______	g. cross examination of defendant's witnesses
8.______	h. direct examination of defendant's witnesses
9.______	i. opening of the court
10.______	j. verdict
11.______	k. prosecutor's rebuttal argument
12.______	l. swearing in of the jury
13.______	m. deliberations by the jury

4. Name the parties to a case in a civil trial.

5. Name the parties to a case in a criminal trial.

6. Explain the roles of the following:

Attorneys-

Judge-

Jury-

LESSON FOUR

OBJECTIVES:

1. Given the stipulated facts and the sworn statements of the case: State of Washington v. Herschel C. Lyon, the students will demonstrate they understand the case through discussion.

2. Students will demonstrate an understanding of the concept of "innocent until proven guilty beyond a reasonable doubt," by drawing a cartoon.

MATERIALS:

*Stipulated Fact sheet
*Sworn Statement sheets
*Plain paper, drawing materials

PRIOR TO LESSON:

1. Make copies of Stipulated fact sheet and Sworn Statement sheets for all the students.

PROCEDURES:

2. Tell the students that Herschel C. Lyon has been accused of first degree murder of Sam Steelhead. They are going to participate in Herschel's trial to determine if he is innocent or guilty.

Pass out the Stipulated Fact sheet (a summary of the facts that both sides agree are true.) Have the students read silently, then read aloud. Discuss to make sure all the students understand the facts:

1. What court is the case in?
2. Who is bringing the case?
3. Why?
4. Who is the defendant?
5. What crime is he charged with?
6. What are the elements of the crime?
7. What is Herschel's defense?

3. Pass out the Sworn Statement sheets. Read silently, then read aloud. Through discussion, make sure all the students understand the statements. (Will analyze in more detail in Lesson 5).

4. Complete a time line with students, by drawing a line and putting dates underneath. Have students discover from the stipulated facts and from witness statements what relevant events happened when.

Herschel to Ballard Locks from Pacific O.; Harassmt. began	Sam & Sandy left Pacific for locks	Sam & Sandy arrive at Locks; changing to fr. water	12 noon, sea lion seen, Lotta saw #40; #40 eats 2 fish; restaurant goers cheer	Herschel has stomach ache	Class trial
1985	3/22/91	3/29/91	3/31/91	4/1/91	Mock trial date

6. Explain that a person accused of a crime is considered "innocent until proven guilty beyond a reasonable doubt". Write the quote on the board. Ask the students to share examples that would help others understand that statement.

NOTE TO TEACHERS:

The law says a reasonable doubt is not "a doubt for the sake of doubt, nor a doubt without foundation in the facts or testimony. A reasonable doubt exists if after a consideration and comparison of all the evidence, the juror cannot vote to convict with a moral certainty.

5. Tell the students that an accused person does not have to prove innocence. If only one person on a jury has any reasonable doubts, the accused person will be set free. However, in this case, Herschel is raising a defense of necessity and the burden is on him to prove

6. Pass out drawing paper. Tell the students they are to draw a cartoon that will illustrate the concept "innocent until proven guilty beyond a reasonable doubt" so that younger students would understand it.

EXTENSION: Have students make a file to keep all trial documents in, that is, the newspaper articles, stipulated facts and sworn statements.

SUPERIOR COURT, KING COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON)
)
v.)
)
HERSCHEL C. LYON)
)

STIPULATED FACTS

State of Washington v. Herschel C. Lyon is a criminal case. Herschel C. Lyon is charged with first,degree murder in connection with the death of Sam Steelhead. The death occurred at the Ballard Locks, City of Seattle, located in King County, State of Washington.

Sam Steelhead was passing through the Locks on his way back to the Cedar River watershed, the place of his birth. He had traveled from the Pacific Ocean to complete another stage of his life cycle.

Sam Steelhead died March 31,1991 at the foot of the fish ladder at the Ballard Locks, as a result of having been mauled. Herschel C. Lyon was observed in the area at the time.

To convict Herschel C. Lyon of the crime of murder in the first degree, the prosecution must prove each of the following elements beyond a reasonable doubt:

(1) Herschel mauled Sam Steelhead, thus causing his death;
(2) Herschel acted with intent to cause the death of Sam Steelhead;
(3) The intent to cause the death was premeditated;
(4) Sam Steelhead died as a result of Herschel's actions.

For the defendant to be found not guilty, the prosecutor must fail to prove one of the four elements of the crime and/or the defendant must prove a defense that excuses or justifies his behavior. Herschel claims the defense of necessity, claiming that the circumstances required him to kill Sam Steelhead to protect his own health in a reasonable manner and there was no other acceptable choice for him. For Herschel to establish this defense, he must prove each element of necessity by a preponderance of the evidence.

There are three witnesses each for prosecution and for defense:

PROSECUTION:	**DEFENSE:**
Sandy Steelhead, sister or brother of Sam Steelhead	Herschel C. Lyon Defendant
Robin Whitecub, director of Cedar River tribal hatchery	Dee D. Kated, director of Seattle Greenpeace office
Lotta Sport, president of Trout For All, a Marine sport fishing group	Ev R. Reddy, retired biologist co-author of the Mammal Protection Act, 1972

Note to Teachers:

The crime is made up of elements (listed 1-4). The Prosecution must prove all four of those beyond a reasonable doubt to win. Herschel wins if all the elements are not proved and/or if he can prove his defense of necessity-that he acted to protect his own life and health, and that there was no other acceptable choice--by a preponderance of the evidence.

In Washington, this defense is not available when the crime charged is murder or manslaughter. However, for the purpose of this mock trial, it is available.

SWORN STATEMENTS

SANDY STEELHEAD, Witness for the Prosecution

My name is Sandy Steelhead and I live in the Cedar River. However, I spend a good deal of time in the Pacific Ocean with my relatives. My brother, Sam, and I arrived at the locks on Friday, March 29, 1991. We were pretty tired. We made the trip from the Pacific Ocean in a week. The closer we got to the locks, the more we could smell the waters of our ancestors.

You know, until 80 years ago our ancestors used to swim up the Black River to return to our spawning grounds. In 1916 the Army Corps of Engineers built a canal to join Lake Washington and Lake Union. That lowered the level of Lake Union by nine feet and caused the Black River to dry up. That's why we come up Puget Sound to the locks now. It's not our fault.

Last year 1,600 of us needed to make it through the locks to keep our species from being endangered. Last winter, only 714 of us made it. You can see that our main job is to get back to our ancestral stream. We can't worry about sea lions!

When we get to the locks, we have to wait around a bit. We need to change from living in salt water to living in fresh water. We prefer to use the fish ladder at dusk or dawn. You probably don't realize that part of the canal floor is concrete. There are no kelp beds or other places for us to hide from predators.

It was at noon on Sunday, March 31, 1991 that my brother, Sam, and I noticed a big sea lion swimming around at the opening of the locks. We had heard that a number of them had come up from California.

I was just resting when suddenly, there was an enormous splash. Near me in the water I noticed my brother, Sam, swimming for his life. A large, brown, bad smelling animal was chasing him. I know it was a sea lion and I'm almost sure I saw on a tag on his ear with the number 40 on it. I never saw my brother alive again.

People in the nearby restaurants were laughing and clapping --they urged this monster to kill my brother.

ROBIN WHITECUB, Witness for the Prosecution

My name is Robin Whitecub, a member of the Muckleshoot tribe. I live on the Cedar River Reservation. I am the Director of our tribal fish hatchery. You may not realize it, but the state has a legal and moral obligation to protect the steelhead.

In the 1850's in a treaty signed by the government and our tribe, territorial Governor Isaac Stevens promised the tribes the eternal right to fish in their usual and accustomed places. Later, Federal District Court Judge George Boldt made that promise stick. We are guaranteed half of the harvestable catch. Now Herschel is eating our half!

Because of Herschel, we were only able to harvest 101 fish this season. We should have taken 478. Herschel and his buddies got 754!

Sea lions are a nuisance animal. Sometimes they are so aggressive they snap at fish as we pull them from a net! When they are encouraged, they eat more and more fish than they need to survive.

You need to know that steelhead like Sam are about 45 inches long and weigh up to 36 pounds. Herschel weighs about 800 pounds and needs about 1,200 lbs. of fish per month. By the size of Herschel, I'd say he eats about 1,500 lbs. of fish a month.

Herschel is guilty of murder. He's not only destroying a unique species, he's also depriving my people of an income, all because he is a glutton.

LOTTA SPORTZ, Witness for the Prosecution

My name is Lotta Sportz. I live at 9001 Spruce Avenue, Seattle, Washington. I am the President of All For Trout, a sports fishing club. I just want to say how upset I am. Wild steelhead, like Sam, are a treasured sportfish.

Herschel is greedy and not a sportsman. He outweighs, outsizes, and outeats any of us! We believe in giving the steelhead a chance. Not Herschel!

Steelhead are one of nature's beautiful designs. They look powerful and sleek, everything that a fish should be. Herschel takes advantage of them when they tired and getting used to fresh water.

It's possible that wild steelhead like Sam are unique in North America. It may be that he and his relatives are the only large run of wild steelhead traveling through an urban habitat. Once this wild run is gone, the surviving fish will be hatchery fish. An original resident of King County will be gone forever.

Steelhead like Sam provide a lot of money to the people of Seattle. Sport fisherman spend money on equipment, licenses and other things to catch one or two steelhead a season. Herschel doesn't spend anything. And he catches several hundred steelhead a season. It isn't fair.

I was at the locks at noon on Sunday, March 31, 1991. I just went to see how Sam and his family were making it through the fish ladder. I saw Herschel there, with the tag #40 on his ear. He was showing off. He'd make noises, dive down, chase steelhead and then pop up, looking at the tourists. It made me sick when people would laugh and clap for him! I saw him eat two fish that day--one before Sam and then Sam. That's 70 pounds of fish--twice as much as he needed to eat. What a pig!

HERSCHEL C. LYON, Witness for the Defense

My name is Herschel C. Lyon, also known as #40 from the tag on my ear. Currently, I am living at the entrance of the Ballard Locks. First, I just want to get one thing straight. In 1985, I was swimming along in the Pacific Ocean minding my own business. Then I noticed huge schools of fish swimming in a current of warm water. Well, being a sea lion I did what comes naturally. I followed those fish and they led me to Puget Sound, right here to the locks. I want you to know I was just an innocent follower.

I may be called a California sea lion, but my range is the entire Pacific Coast. I go wherever the fish are in order to survive. Fish are my regular and natural diet, along with squid and hake.

Let me tell you how I've been treated, just for doing what comes naturally to me. Biologists have dropped firecrackers in the water where I've been swimming. You can imagine how that hurts the ears. They've tried to feed me dead steelhead laced with yucky tastes that make you want to throw up! Then, they played tapes of killer whales. Now you know how afraid I am of killer whales! That was so mean!

And that's not all. They captured me and my friends and hauled us away. First they took us to the Washington coast. Hey, it was okay for a weekend, but I missed Seattle. Then they took us all the way back to the Channel Islands in California.

It was all right. After all, I am a California Sea Lion. But, it was drag. That's where my parents live. And all my aunts and cousins. You know how that can be. "Herschel, why don't you do this, and why don't you do that. . ." Me and my friends decided to head back to Seattle where we could have a little peace and quiet.

Well, I can't remember exactly how many fish I did eat that day. The people in the restaurants recognized me--I[m famous you know. I was giving my fans a little show, but I don't believe that I ate two fish. Did I kill and eat Sam? I don't know. I mean, all steelhead look alike. But those biologists started shooting rubber-tipped arrows at me and my friends. Sure, they aren't supposed to kill us, but they sure hurt. And they make me mad. I'm not hurting them. Besides, it was time for my snack. Hey, I'm just doing what comes naturally. I have to eat fish to survive. Look it up in the encyclopedia if you don't believe me. It's there-the California Sea Lion's main food is fish. I am a cousin of the bear, you know. No one is bothering him for eating salmon. Why's everyone on my back?

In order to survive, I need to eat 5% of my body weight a day. That's only 40 pounds of fish daily! Some say I'm a little overweight, but hey, I love to eat! Why should I go out into the ocean and cruise all day just for just enough bottom fish to survive, when I can relax at the locks, banqueting on my favorite fish, steelhead, any time I want? I'd be crazy!

It is true that the next day I had a bad stomach ache--maybe I ate too much, and they don't make Pepto Bismol for sea lions.

DEE D. KATED, Witness for the Defense

My name is Dee D. Kated. I live on a houseboat in Lake Union. I am the director of the Seattle chapter of Greenpeace, an organization dedicated to saving the environment. I just want to say using arrows to thump sea lions is a crazy idea. This is shooting from the hip, literally.

I was at the Locks on March 31, 1991, having a picnic lunch. I saw Herschel there, doing what he was born to do - eating fish. I saw him eat at least one fish, but I really don't remember whether he ate any more. There were other sea lions around that day, too.

And I'm tired of this wild steelhead myth. Since 1914, one million steelhead have been introduced to Lake Washington from other river systems. That means the steelhead today are "genetically mixed." The original fish, what I would call "wild," have been gone for a long, long time and have nothing to do with the sea lions.

Different things are adding to the steelhead decline. Habitat destruction, for example. In Seattle, you can go to a couple places where you used to see a spawning stream and find a parking lot or mall. Why, the whole lock system was imposed by man! To make this waterway, two rivers that the steelhead used to return home were diverted and have now died. Dams are another problem, but I won't go into that right now.

There's also pollution, and the interception of the run by high sea drift-net fleets from Japan, Taiwan, and Korea. Recently, one Taiwanese vessel was apprehended and 4,000 tons of illegal salmon were found in the hold. It is humans that are responsible for the death of steelhead, not a sea lion who is just doing what comes naturally.

There is something more important here. If the state succeeds in finding Herschel guilty of first degree murder, then the state may put Herschel to death. This would be against the Marine Mammal Protection Act of 1972. If the state wins, the execution of Herschel and other sea lions could begin by next winter.

We at Greenpeace regard this as a test of the Bush Administration's commitment to the Marine Mammal Protection Act. Greenpeace will not allow Washington state to kill a mammal. It would be a clear violation of the spirit of the marine mammal act.

The idea that our state would consider executing sea lions is a sad commentary on what kind of people we are in the Northwest.

EV R. REDDY, Witness for the Defense

My name is Ev R. Reddy and I recently retired from my position with the government as a marine biologist. I moved to Olympia, Washington from California but I've followed the problems Herschel is having in the newspaper.

I know Herschel from long ago. He and his mother lived down in California. From my study of his family, I became an expert on marine mammals. I helped the U.S. Congress write the Marine Mammal Protection Act in 1972.

You see, we found that certain marine mammals were becoming extinct or endangered due to the activities of humans. We did not believe that was right. Other species shouldn't die out just because of us! Everyone knows that our ecosystem is made up all kinds of species, and each is valuable.

We also knew how much we didn't know! Then, there wasn't enough knowledge about the ecology or the population of different marine mammals. The act makes it illegal to harass, hunt, capture, or kill any marine mammal. Only commercial fishermen who are protecting their gear or catch may kill sea lions. The protection of fish and shellfish is not as important as the protection of mammals.

The present healthy population of Herschel and his friends is one result of this legislation. In 1975 there were only 27,000 sea lions. Today there are 177,000.

Up until 1960, Washington State allowed sea lions to be killed. Sea lions were first spotted in Puget Sound in 1950 and were first noticed eating fish at the locks in 1970. Harassment of sea lions began there in 1985.

The sea lions have been treated very badly at the Locks. There are other solutions to this problem. One is to reroute the steelhead or to make them move through the locks faster, like the salmon do. Another is to build underwater barricades to keep the sea lions away from the steelhead. One letter to the editor even suggested putting the sea lions in the zoo until the steelhead run is over! I'm confident we can solve this problem. Herschel is only doing what he was born to do.

As I said, I knew Herschel since he was a pup. Even then, Herschel liked to be the center of attention--he'd do anything to please a crowd. One time, when he was barely six months old, he ate a boogie board that he found in the water just to impress his friends.

Herschel has always had a weight problem. He always ate a little more than he should and avoided any exercise. He has a good heart though.

LESSON FIVE

OBJECTIVES:

1. The students will describe the main arguments in favor of each side of the case.
2. The students will identify facts that support or weaken each major argument.
3. The students will write an opening statement for one side of the case, using the theory of the case.

RESOURCE:

Two attorneys or law students (optional)

MATERIALS:

*Completed T-Chart worksheets from LESSON 1
*Sworn statements of the witnesses

PRIOR TO THE LESSON:

1. Divide the class into two groups, balancing strengths and weaknesses.

PROCEDURES:

2. Assign the class into two team groups to be either prosecution or defendant. Using the T-Chart Worksheet from Lesson 1, and the Timeline and witness statements from Lesson 4, each team is directed to discuss the following points. Remind students that the facts actually testified to at trial will have to come from the witness statements. Not all information in the newspaper articles is in the witness statements.

If attorneys or law students are present, ask them to facilitate, not direct the group discussion.

-What does our side want to achieve in this case?
-How will we accomplish this goal?
-What evidence do we have to help us?
-What evidence do we have that hurts us?
-What can we claim we will prove in the opening statement?

3. After about fifteen minutes, instruct the groups to brainstorm the general ideas for their opening statements. Explain that the goal is for each side to develop a "theory of the case." This means each side should be able to state in 1 or 2 sentences why they should win:

For example, the prosecutor's theory may be: Herschel is guilty of murder in the first degree because he came to Puget Sound and the Locks to kill and eat steelhead and he did kill and eat Sam. He may not claim the defense of necessity because it was not necessary for him to eat Sam to survive, because he ate far more fish than he needed to survive.

> Herschel's theory of the case may be "Sure, I killed Sam, but it was out of necessity because I had to eat him to survive, therefore, I am not guilty."

Discussion should focus on:

- -What are the most important facts we want to tell the judge and jury in our opening statement?
- -What evidence should we stress?
- -What evidence do we need to explain?
- -What decision do we want from the jury?
- -How will we ask for that?

Use butcher paper to record ideas. Attorneys or law students can help keep the students on course.

4. Tell students to write an opening statement. On the day the assignment is due, each student should get a chance to read the prepared statement to his/her team. The team should decide which statement is best, or which portions of various statements might be used in combination.

LESSON SIX

OBJECTIVES:

1. The students will identify the responsibilities of each of the players.

2. As **examiner attorneys**, the students will write a logical sequence of direct or cross examination questions designed to achieve the purpose of the witness examination.

3. As **attorneys assigned to the opening statements and closing arguments**, the students will outline the high points of the ideal opening statement and closing argument for their respective sides.

4. As **witnesses**, the student will recall from memory the important points made in the witness affidavit, and respond correctly to possible direct and cross examination questions.

5. As **jury members**, the students will create an identity for themselves, when they are not assisting their team.

6. As **clerk, bailiff, courtroom artist, court reporter,** and **newspaper reporter,** the students will be responsible for their assigned duties.

MATERIALS:

*Handout, Role Responsibilities
*Teacher Reference, Steps in a Trial (Optional Handout)
*Prosecution Worksheet
*Defense Worksheet
*Sign Up Sheet

PRIOR TO THE LESSON:

1. Run copies of the Role Responsibilities Handout and Prosecution and Defense Worksheets. Review Steps in a Trial. (Optional: Make this a Handout for students.)

2. Assign students to specific roles and groups. Complete Sign Up Sheet.

PROCEDURES:

3. Pass out copies of the handout, **Role Responsibilities**. Read in class and discuss. Play "Who Am I?"

"Who Am I" Game directions: (similar to 20 Questions)

Choose a student to sit in the front of the class. Secretly assign the student one of the roles from the Role Responsibilities reading. Using their Role Responsibilities reading, the rest of the students ask questions which can be answered by either "yes" or "no." (Allow the student in front to use his/her Role Responsibilities reading. You may have to prompt at first.) They get unlimited "yes" answered questions to identify the role but only 4 "no" answers before they lose the game. Choose another student to come up to try to "stump" the class. Play enough times that the students demonstrate they are able to put roles and responsibilities together quickly and accurately.

4. Tell students what their specific roles are. Each witness should have an alternate, so 2 students are assigned to each witness role.

Be sure to emphasize that until the actual trial, the class is still working in two teams and the members of each team need to be supportive and productive, e.g., quizzing witnesses to help them practice, writing questions with the attorneys, searching facts, devising strategies for success.

Have the students work in teams of 5-6, focusing on either witness statements, drafting questions, or opening/closing arguments. For example:

The prosecution team (1/2 the class) will break into three groups of 4- 6 students each. One group will be the Witness group, 1-P. They will take turns being the witness role they've been assigned and other students will take turns asking them questions. Sandy could go first and the other students drill him/her, asking all the questions they can think of. Students then take turns playing their witness role, including the alternates. Everyone asks questions.

The second group, 2-P, will be the examiner attorneys, who work together on the questions for each witness. (Those assigned to jury or clerk and bailiff roles can help in either this group or the attorney group working on statements.)

The third group, 3-P, will work on drafting opening statements and closing arguments.

Make similar assignments for the State's team. After one or two class periods, have 2-P, examiner attorneys, work with witnesses. 2-P will also work on cross-examination questions, with attorneys on each side working together with witnesses. Have 3-P practice delivering opening and closing statements.

5. Instruct all students to read the case materials again now that they know their assigned parts.. Identify and study the

particular parts of the case materials applicable to their specific roles.

ROLE RESPONSIBILITIES

JUDGE The judge is the person who is in charge of the court. He or she makes sure that the trial is fair and orderly. The judge sees that both sides of the case have a fair chance to present their arguments. Then the judge tells the jury what the principles of law in the case are.

JURY (12) The people on the jury listen carefully to the statements of the witnesses. The jurors think about the facts a witness tells to see if they make sense and if they agree with what other witnesses say. Each juror also listens to the opening statements and closing arguments of the lawyers. At the end of the trial, they will vote if the prosecution has **proven beyond a reasonable doubt** that the defendant is guilty. If even one juror is not sure, then the defendant cannot be found guilty. All 12 must agree. (For the mock trial, only a majority must agree.)

JURY FOREPERSON

After the trial is finished, the jury will meet to decide the case. Its first assignment is to pick one of the jurors to be the foreman or forewoman. This person will lead the discussion, making sure that each member of the jury has a chance to speak. After returning to the court, he or she will stand and announce the verdict of **innocent** or **guilty** to the court.

WITNESSES (6 -- 12 with alternates)

A witness is a person who knows facts about a court case. A witness answers the questions the attorneys ask in court. A witness is sworn to tell the truth. The attorneys decide which witnesses they want to question. In a mock trial, the witnesses should answer questions with information from the sworn statements.

PROSECUTORS, THE ATTORNEYS FOR THE STATE (3 - 5)

These attorneys work together. They represent or speak for the state and its citizens. They try to show enough evidence to persuade the jury that their verdict should be in favor of the plaintiff. Their job is to **prove** Herschel is guilty.

Some helpful questions to consider:

-What facts can you use to prove a crime was committed?

-What facts can you use to show Herschel had a chance to commit the crime?

-What facts can you use to show Herschel had a reason to maul and murder Sam?

-What facts can you use to show Herschel really did maul and murder Sam?

-What facts can you use to show Herschel did not have to kill Sam to survive?

DEFENSE ATTORNEYS (3 - 5)

These lawyers work together to bring the defendant's case before the court. They try to show there is not enough evidence to prove the defendant guilty. This may be done by persuading the jury that the witnesses for the plaintiff were not dependable. The defense attorneys may also try to show that the evidence was not based on fact or that the witnesses contradicted each other. These attorneys' job is to make the jury doubt. Just one reasonable doubt is enough for Herschel to go free as if nothing had ever happened.

Some helpful questions to consider:

-What facts show that Herschel did not have a chance to commit the crime?

-What facts show that Herschel was not the kind to maul a steelhead?

-What facts show that Herschel did not have a chance to do the crime?

-What facts show that if Herschel did kill Sam, he did so only to survive?

CLERK OF THE COURT

The clerk's job is very important in a mock trial. The clerk is in charge of time keeping, making sure that each part of the trial is kept to set limits.

These limits are as follows:

OPENING STATEMENTS	**3 MINUTES EACH**
DIRECT EXAMINATION	**4 MINUTES EACH**
CROSS EXAMINATION	**2 MINUTES EACH**
CLOSING ARGUMENTS	**3 MINUTES EACH**

If during direct examination or cross examination, an attorney objects, the clerk should stop the clock until the judge makes a ruling.

The clerk should make time cards that read "2 MIN," "1 MIN," and "0." Hold up these cards to the judge and to the attorney who is talking to let them know how much time is left.

BAILIFF

The bailiff's job is to make sure the trial runs smoothly. First, the bailiff announces the court is ready to begin:

"All rise, the Superior Court of King County, State of Washington, is now in session, the Honorable Judge ______ presiding."

The bailiff will also be responsible for swearing in the jury. The judge will tell the bailiff when to do this. **"Do you swear or affirm that you will base your decision solely on the evidence presented before you in this case, not allowing any prior class work to influence your final decision?"**

The bailiff marks all exhibits for identification as "Prosecution Exhibit #1, 2, 3, etc." or "Defense Exhibit #1, 2, 3, etc." Keep track of these on a piece of paper.

The bailiff swears in each witness as he/she is called to the stand. Raise your right hand, ask the witnesses to raise their right hand and ask:

"Do you swear or affirm that the testimony that you are about to give is the truth and nothing but the truth?"

The bailiff lets the judge know when the jury has reached a verdict.

COURT REPORTER

The court reporter keeps a written or taped record of the trial. If someone has a question, for example, about what a witness said, the court reporter reads what the witness has said.

COURTROOM ARTIST

The courtroom artist draws quick sketches of the people in the trial to be published in the newspapers.

NEWSPAPER AND/OR TV REPORTERS

These individuals take notes and do interviews to report to the general public on the progress and outcome of the trial.

STEPS IN A TRIAL

The Opening Statement

This is the first time the attorneys for each side get to tell the judge and jury about what happened to their clients. The first impression is very important, painting a picture of the case from their unique points of view.

Opening statements should include:
1) a summary of the facts according to each party
2) a summary of the evidence that will be presented at the trial
3) a statement regarding what the party hopes to get out of the trial.

The Direct Examination

After the opening statements, the process of "witness examinations" begins. The prosecutors present their witnesses first. Then the defense presents theirs.

A witness is called to the stand. The attorney who called the witness asks a series of questions called the "direct examination."

These questions:
1) get the witness to tell a story, reciting what he/she saw, heard, experienced, or knew about the case
2) asks only for facts, not opinions (unless the witness has been declared an "expert.")
3) are "open-ended" questions, that ask who, when, how, why. They should not be "leading questions" that suggest the answer.

For example: It is improper to ask on direct examination, "Sandy, you saw Herschel maul and kill Sam, didn't you?" The proper way to ask the question would be, "Sandy, what did you see at the locks on March 31, 1991?"

Direct examination usually begins with: "State your name please", "What is your address?", "What is your occupation?"

The Cross Examination

The cross examination is designed to show the judge and jury that a given witness should not be believed because:

1) he/she cannot remember the facts
2) he/she did not give all the facts in direct examination
3) he/she told a different story at some other time.
4) he/she has a reputation for lying
5) he/she has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge toward one of the parties.

These questions must be limited to the subjects discussed in the direct examination. Leading questions may be asked in cross-examination. For example, it is proper on cross examination for an attorney for the defense to ask: "Sandy, you couldn't really see who ate Sam, could you?"

Note: At the close of cross examination the attorney who conducted the direct examination may do a "redirect," if there is time remaining from the direct examination. A redirect examination follows the same rules as the direct. However, the questions are limited to the subjects discussed in the cross examination.

The Closing Arguments

The purpose of the closing argument is to convince the jury that the evidence presented is sufficient to win the case. The closing argument should include:

1) a summary of the evidence presented that is favorable to the presenting attorney's side
2) a summary of the case
3) a legal argument to show how the law requires the judge/jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing.
4) **may not** include new facts that did not come up during the trial.

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PROSECUTION WORKSHEET

What evidence do we have that shows:

(1) That on March, 31, 1991, Herschel C. Lyon mauled Sam Steelhead, thus causing his death?

(2) That Herschel C. Lyon acted with intent to cause the death of Sam Steelhead?

(3) That the intent to cause Sam's death was premeditated?

(4) That Sam Steelhead died as a result of Herschel C. Lyon's acts?

(5) That circumstances did not require Herschel to kill Sam to protect his own health in a reasonable manner?

(6) That there were ways that Herschel could have taken care of his health other than killing Sam?

DEFENSE WORKSHEET

What evidence do we have that shows:

(1) That on March, 31, 1991, Herschel C. Lyon did not kill Sam Steelhead?

(2) That Herschel C. Lyon did not intend to cause the death of Sam Steelhead?

(3) That Herschel did not premeditate (think it out before) Sam's death?

(4) That Sam Steelhead did not die as a result of Herschel C. Lyon's acts?

(5) That Herschel had to kill Sam in order to protect his own health in a reasonable manner?

(6) That there was nothing else that Herschel could reasonably have done than kill Sam?

ROLE ASSIGNMENT SIGN UP SHEET

PROSECUTION WITNESSES

1-P

SANDY ____________________

ALT. ____________________

ROBIN ____________________

ALT. ____________________

LOTTA ____________________

ALT. ____________________

DEFENSE WITNESSES

1-D

HERSCHEL ____________________

ALT. ____________________

DEE ____________________

ALT. ____________________

EV ____________________

ALT. ____________________

PROSECUTING ATTORNEYS

2-P

OPENING ____________________

CLOSING ____________________

REBUTTAL ____________________

3-P

DIRECT SANDY ____________________

DIRECT ROBIN ____________________

DIRECT LOTTA ____________________

CROSS HERSCHEL ____________________

CROSS DEE ____________________

CROSS EV ____________________

CLERK ____________________

BAILIFF ____________________

DEFENSE ATTORNEYS

2-D

OPENING ____________________

CLOSING ____________________

3-D

DIRECT HERSCHEL ____________________

DIRECT DEE ____________________

DIRECT EV ____________________

CROSS SANDY ____________________

CROSS ROBIN ____________________

CROSS LOTTA ____________________

COURTROOM ARTIST ____________________

COURT REPORTER ____________________

LESSON SEVEN

OBJECTIVES:

1. The students will differentiate between types of evidence.

2. The students will read the types of standard objections.

RESOURCE:

Attorney or law student (optional)

MATERIALS:

*Types of Evidence overhead master
*Standard Objections Handout

PRIOR TO THE LESSON:

1. Make overhead and run enough worksheets for everyone in class.

2. Invite attorney or law student to teach this lesson. Brief him/her ahead of time.

PROCEDURES:

3. Just before the trial, introduce this lesson. While complicated rules are used to regulate proof in American trials, the students need some understanding of their scope and sequence. A lawyer or law student is an excellent resource for this lesson.

4. Use the overhead to introduce the students to different types of evidence. Discuss.

5. Pass out the Standard Objections Worksheet to the students. Fill in as the class discusses each one.

STANDARD OBJECTIONS

An attorney can object any time she or he thinks the opposing attorneys are attempting to introduce improper evidence or are violating the rules of evidence.

The attorney wishing to object should **stand up** and do so at the time of the violation. When an objection is made, the judge will ask the reason for the objection.

Then the judge will turn to the other attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("overruled") by the judge.

The judge will then decide whether the question or answer must be discarded because it has violated a rule of evidence ("Objection sustained") or whether to allow the question or answer to remain on the trial record ("Objection overruled.")

IRRELEVANT EVIDENCE

"I object, Your Honor. This testimony is irrelevant to the facts of the case."

LEADING QUESTIONS

"Objection. Counsel is leading the witness." (This is only objectionable when done on direct examination.)

BADGERING

"Objection. Counsel is badgering the witness."

OPINION

"Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on this subject, opinions will not be allowed.

LACK OF PERSONAL KNOWLEDGE

"Objection. The witness has no personal knowledge that would enable him or her to answer this question."

ARGUMENTATIVE QUESTION

"Objection. That question is argumentative. (Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner.)

SPECIAL RULE FOR MOCK TRIALS

An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If you believe a witness has gone beyond the information provided, and is providing new information that is totally out of character, and **will change the outcome of the trial**, use the following objection:

"Objection. The witness is creating material fact which is not in the record."

HINTS ON OBJECTIONS

Only object when you are **sure** there is a reason and you have a **specific** objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness shall also raise objections when the opposing side conducts their examination of that witness.

If the judge rules against you on a point in a case, take the ruling gracefully and act cordially toward the judge and the other side. Don't be afraid to object again.

LESSON EIGHT

OBJECTIVES:

1. The students will conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
2. The students will make complex prepared oral presentations as attorneys and witnesses.
3. The students will demonstrate skill in listening, rapid critical analysis, and extemporaneous speech.
4. The students will demonstrate knowledge of the rules of evidence and procedure.
5. The students will demonstrate knowledge of the law applicable to the case.

RESOURCE:

Invite a judge, attorney, or your principal to be the judge for the trial. An Agenda for the Judge, telling him or her exactly what to do is included in this lesson.

MATERIALS:

*Mock Trial Administrative Checklist
*Agenda for Judge

PRIOR TO THE LESSON:

1. Make a copy of the Checklist. Check yourself through the list.

PROCEDURES:

2. Proceed with the trial. Good luck!

MOCK TRIAL ADMINISTRATIVE CHECKLIST

These are tasks the teacher should check off as accomplished. Some are noted as "optional"-all others are necessary for successful trials.

______ Trial selected

______ Time-frame determined **(dates for each lesson and the trial itself)**

______ Lesson plans adapted

______ Materials selected for students

______ Materials copied for students

______ Students' preparation begun

______ Court field trip date set (optional)

______ Attorneys or Law students identified to help (optional)

______ Attorneys invited (optional)

______ Attorneys briefed (optional)

______ Judge identified

______ Judge invited (actual judge, attorney, teacher or student)

______ Room selected

______ Microphones ordered (for larger rooms only)

______ Invitations sent (other classes, administrators, parents) (optional)

______ Jury selected/instructed (optional)

______ Judge's robe (an academic gown will suffice), gavel, etc. obtained. (optional)

______ Students' preparation completed

______ Trial conducted

______ Trial debriefed

AGENDA

A. Mock Trial Enactment

1. Bailiff calls court to order as Judge enters.

2. Judge announces case of State v. Herschel C. Lyon and reads aloud these instructions:

   "This is a criminal case brought by the State of Washington charging the defendant, Herschel C. Lyon, with first degree murder. The State claims that Herschel C. Lyon, with a premeditated intent to cause the death of Sam Steelhead, caused his death. In support, the State claims that, on March 31, 1991, Herschel C. Lyon attacked Sam Steelhead, killing and eating him. The State denies that the defendant acted out of necessity. The State claims that Herschel is an overweight sea lion that eats fish, specifically Sam Steelhead, to please the crowds of humans at restaurants alongside the Locks.

   "Herschel admits that he killed and ate a steelhead on March 31, 1991, although he claims that he is not sure who the steelhead was. He claims that he did this out of necessity, in that he needs to eat 40 lbs. of fish per day in order to maintain his health.

   The bailiff will now swear in the jury. ("Will the jury please rise and raise your right hands? Please indicate your agreement by saying "I do." Do you swear or affirm that you will base your decision solely on the evidence presented before you in this case, not allowing any prior class work to influence your final decision?") After the bailiff swears in the jury, tell the jury to be seated.

   "The burden of proof in this case is on the prosecution, and is proof beyond a reasonable doubt. The defendant must prove his defense of necessity by a preponderance of the evidence.

   "The case will now follow in this order. First the prosecutor will make an opening statement, outlining the evidence to be presented on behalf of the prosecution's case. The defense lawyer will then make an opening statement, outlining the defense case. Second, the prosecutor will introduce evidence. At the conclusion of the prosecutor's evidence, the defense may introduce evidence. Third, after all the evidence has been presented, I will give you more instructions, after which the lawyers will make closing arguments. Then you will go to the jury room, select a foreperson and decide on your verdict."

3. Judge asks counsel to introduce themselves and their client.

4. Prosecutor's Opening Statement (Time for each activity is tracked by clerk who notifies Judge and lawyer of remaining time by holding up cards indicating "2 min.," "1 min.", and "0" remaining.)

5. Defense Opening Statement (No reservation to end of Prosecutor's Case in Chief.)

6. Prosecution case-in-chief consists of three witnesses:

   Sandy Steelhead, sibling of Sam Steelhead
   Robin Whitecub, Director of Cedar River Tribal Hatchery
   Lotta Sport, President of Trout for All

   Note: Bailiff, not Judge, swears in witness.

7. Defense case-in-chief consists of three witnesses:

   Herschel C. Lyon, Defendant
   Dee D. Kated, Director of Seattle Greenpeace
   Ev R. Reddy, retired biologist

8. After all of the testimony, the Judge then reads aloud the closing instructions to the jury:

   "To convict Herschel C. Lyon of the crime of murder in the first degree, the prosecutor must have proved each of the following elements beyond a reasonable doubt:

   (1) That on or about the 31st day of March, 1991, Herschel C. Lyon mauled Sam Steelhead, thus causing his death;
   (2) That Herschel C. Lyon acted with intent to cause the death of Sam Steelhead;
   (3) That the intent to cause the death was premeditated;
   (4) That Sam Steelhead died as a result of Herschel C. Lyon's acts; and

   "It is a defense to a charge of murder in the first degree that the homicide was committed due to necessity. To establish the defense, Herschel must prove that circumstances required him to kill Sam to protect his own health in a reasonable manner and that there was no other acceptable choice for him.

   "When you go to the jury room, you should first pick a foreperson. It is his or her duty to see that discussion is carried on in an orderly fashion, that the issues are fully and fairly discussed and that every juror has a chance to participate.

   "All of the jurors must agree upon a verdict. When you have so agreed, the foreperson will notify the bailiff who will conduct you into court to declare your verdict."

9. Prosecutor's Closing Argument

10. Defendant's Closing Argument

11. Prosecutor's Rebuttal

12. Jury Deliberations

B. Debriefing

After the trial, the Judge should convene the students for debriefing. Any time the jury reaches a verdict, the Judge should suspend the debriefing process and allow the jury to render its verdict. Following the verdict, the Judge should resume the debriefing.

During the debriefing the Judge should acknowledge the contributions of the bailiff and clerk, and later thank the jury for listening. The Judge should then offer constructive comments to the students, explaining the reasons for rulings on objections, discussing the effectiveness of their strategies and commenting on the performance of witnesses. The Judge may describe how this mock trial differs from actual cases.

C. **Verdict.** The verdict will be read by the foreperson. The Judge may poll the jury if time allows.

D. Adjourn

LESSON NINE

OBJECTIVES:

1. The students will analyze the strong and weak points of each case presented in the trial.
2. The students will identify the person or persons whose performance made a difference in the case.
3. The students will critique the trial from the standpoint of its success in achieving justice.

RESOURCE:

Judge or attorney (optional)

MATERIALS:

*Questions to Consider overhead transparency master

PRIOR TO THE LESSON:

1. Make overhead transparency.

PROCEDURES:

2. Put the overhead on. Start with the prosecution and ask only the team members to respond to the questions. Defense team members should listen carefully. Switch to defense team members when the prosecution is done. [These are the teams first formed early in the unit: prosecuting and defending.]

3. Move to whole group discussion. Encourage observations, feelings and questions. An attorney or judge is especially effective in debriefing a mock trial by comparing what went on to what usually occurs in real courts.

4. In class, or as homework, have the students write a brief essay telling whether or not the trial was a sensible way to achieve justice in this particular case, and whether justice was achieved, in fact.

Extension/Alternate activity: Students could be asked to conduct a mediation of the sea lion/salmon conflict. Some or all of the witnesses at the trial can take part in the mediation session, representing their point of view. Two students can serve as co-mediators. Use the Steps in a Mediation, following this lesson.

QUESTIONS TO CONSIDER IN DEBRIEFING

-WHAT WERE THE STRONG POINTS IN OUR PRESENTATION?

-WHAT WERE OUR WEAK POINTS?

-HOW COULD THEY HAVE BEEN AVOIDED?

-WERE OUR ATTORNEYS PREPARED CORRECTLY?

-DID WE MAKE GOOD OBJECTIONS?

-WAS THE TRIAL CONDUCTED IN A FAIR MANNER?

-DID WE ACHIEVE OUR GOAL? WHY OR WHY NOT?

-EVEN IF WE ACHIEVED OUR GOAL, COULD WE HAVE ACCOMPLISHED IT IN A DIFFERENT MANNER?

STEPS IN THE MEDIATION PROCESS

1. Introductions. The goal here is to put the parties at ease, and explain the ground rules, including that the mediator(s) is not a decision-maker, but only a facilitator, who helps the parties that do not agree come to their own agreement.

2. Telling the story. Allow each side to state their side of the story, without interruptions from the other side.

3. Define the problem. The mediator lists the identified issues that need to be resolved. Sometimes at this point more information is needed from the parties, and the mediator should try to clarify the issues by asking the parties questions such as:

"Tell me more about..."

"Party 1, what did you hear Party 2 say about _____?"

"What makes you think that?"

Each party's views and issues should be summarized, and the mediator must make sure to check with each party to be sure the list of issues is correct. For example: "Party 1, I heard you say __________. Is that right? Did I miss anything?"

4. Identify possible solutions. Pick an issue, if there are several. Ask each party for possible solutions to that issue. It's a good idea to start with the easiest problems first. List the suggestions. If there are no suggestions, ask the parties to brainstorm all possible solutions, no matter how impractical they may seem. Once a list of solutions is drawn, ask each party to give their feelings about the possible solutions.

5. Revising and discussing solutions. The mediator revises the list of solutions, based on the expressed feeling of the parties, and attempts to find a solution both parties can agree to.

6. Reaching an agreement. The mediator helps the parties find a solution they both can live with. The agreement should be put in writing. An agreement should also be made about what will happen if either party breaks the agreement.

UNIT THREE - CONSTITUTIONAL KALEIDOSCOPE: A COMPARISON OF INDIVIDUAL RIGHTS AROUND THE PACIFIC RIM

SOURCE:

Written by the University of Puget Sound Institute for Citizen Education in the Law and Tarry L. Lindquist.

USE OF OUTSIDE RESOURCE PERSON: Judges, lawyers, or historians could provide information about individual rights, different constitutions, and what role individual rights play in different cultures. Ex-Peace Corps volunteers, parents who have spent time overseas, university and high school exchange students can provide information about the cultures being studied, increasing student awareness and appreciation.

CLASS PERIODS: 10-12

DESCRIPTION:

This multidisciplinary unit is designed to be taught as a whole piece or as individual lessons which can stand alone. Teachers are advised to read the whole unit to determine if they want to use all or just a few of the lessons. The order of the lessons is easily rearranged. While China, Philippines, Canada, Mexico, U.S.S.R. and the U.S.A. are featured in this unit, teachers should substitute those countries they study during the year or those of particular interest. **[Refer to Blaustein and Flanz, Constitutions of the Countries of the World, 1986, found in the reference sections of most public libraries and law libraries to get a copy of any country's constitution.]**

OVERALL OUTCOMES:

This unit integrates social studies, whole language techniques and higher level thinking skills. Cooperative learning and whole group activities balance individual activities.

Reading and Language Arts Outcomes:

1. The students will research and organize information.
2. The students will discuss differences and similarities.
3. The students will identify the purpose of written materials.
4. The students will write introductions.
5. The students will present original material orally.
6. The students will demonstrate different perspectives in writing.

7. The students will write poetry for two voices.
8. The students will compare written documents.
9. The students will cooperatively organize, create, and produce a classroom newspaper.

Social Studies Outcomes:

1. The students will research data about other countries.
2. The students will make predictions about countries, based on data collected.
3. The students will determine the purpose of constitutional preambles.
4. The students will personalize constitutional rights from other countries.
5. The students will identify the value of important constitutional rights.
6. The students will prioritize constitutional rights.
7. The students will work cooperatively to reach small group consensus.
8. The students will survey their peers and adults to identify a list of constitutional rights.
9. The students will make inferences about the results of their survey.
10. The students will compare the Universal Declaration of Human Rights and the U.S. Bill of Rights.
11. The students will distinguish between "human" and "constitutional" rights.
12. The students will "translate" social studies data into graphic displays.

Higher Level Thinking Skills Outcomes:

1. The students will make predictions based on data.
2. The students will compare their predictions with reality.
3. The students will create preambles for constitutions.
4. The students will explore constitutional rights from opposing points of view.

5. The students will examine constitutional rights from various countries.

6. The students will make personal value judgments about constitutional rights.

7. The students will analyze possible outcomes.

8. The students will synthesize data.

ADDITIONAL RESOURCES:

Blaustein and Flanz, Constitutions of the Countries of the World, 1986.

Amnesty International, Annual Reports, Amnesty International USA, 322 8th Ave., New York, N.Y. (212) 807-8400. Amnesty's Annual Report list human rights violations by country.

LESSON 1

OBJECTIVES:

1. The students will locate, research, and catalog data about an assigned country on the Pacific Rim.

2. The students will describe their research to class members.

3. The students will make predictions about what rights the citizens of each country might include in their constitutions, based on the data collected.

OUTSIDE RESOURCES:

Invite a judge or lawyer in to speak on the concept of rights and what guarantees our Constitution has to protect those rights. Invite speakers from the countries being studied to share cultural and/or constitutional information.

MATERIALS:

*Individual Data Charts, Handouts 1-3
*Encyclopedias, reference books, magazines
*Library access (optional)
*World map
*General art supplies: poster paper, markers
*Six envelopes

PRIOR TO THE LESSON:

1. Assign students to six cooperative groups.

2. Copy six sets of Individual Data Charts (Handouts 1-3), one set for each group.

PROCEDURES:

3. Tell the students they are going to become **reporters**, making a quick trip to visit some countries on the Pacific Rim to discover all they can about the rights granted to individuals in those countries through their constitutions.

4. Display the world map. Ask students to locate China, USSR, Philippines, Canada, Mexico, and the USA. Ask students why these countries are said to be on the Pacific Rim.

5. Assign students to groups and appoint each group to represent a country (China, USSR, Philippines, Canada, Mexico, and USA.)

6. Hand out data sheets to each group: GENERAL, CULTURAL, ECONOMIC. Using the resources you have gathered, ask the students to complete the data sheets, working together.

Tell the students that data consists of short, factual notations. Tell them NOT TO WRITE COMPLETE SENTENCES. Ask students to work quickly and efficiently to fill in each box.

7. When the boxes are complete, instruct the students to create three visuals (i.e., travel posters, charts, graphs, pictorial maps, magazine covers, National Geographic-type layout, etc.) to share the data collected.

8. Ask students to share the visuals with the class. Display them during the unit.

9. Ask the students for a definition of "rights." Prompt students by asking "What do we mean when we say 'rights?'" "Is freedom a right? Is having enough food to eat a right?" What does the word mean to them?

> **Rights** can be classified into many different categories (which will be covered in later lessons), but for our purposes here, "rights" means "generally accepted principles of fairness and justice."

10. In their country groups, ask students to list at least ten rights they think will be found in their country's constitution, based on the data they have discovered. Seal each of these lists in an envelope and thumbtack to the country display.

EXTENSION: Instruct each student to develop a travel brochure for the **CONSTITUTIONAL CONNOISSEUR.** Begin with a description and small pictures using the data collected in this lesson. Continue adding specific information about Constitutional rights as the unit progresses. Use this for review at the end of the unit.

UPSICEL Unit Three, Lesson 1
Handout 1 - GENERAL DATA SHEET

NAME OF COUNTRY___________________

GENERAL DATA

LOCATION

PHYSICAL FEATURES

POPULATION

CLIMATE

NATURAL RESOURCES

CAPITAL

FORM OF GOVERNMENT

FLAG (DRAW IT)

UPSICEL Unit Three, Lesson 1
Handout 2 - CULTURAL DATA SHEET

NAME OF COUNTRY__________________

CULTURAL DATA

LANGUAGES

STYLES OF DRESS

HOLIDAYS

RELIGION

EDUCATION

FOOD

MUSIC/ARTS

TRADITIONS & CUSTOMS

UPSICEL Unit Three, Lesson 1
Handout 3 - ECONOMIC DATA SHEET

NAME OF COUNTRY ______________________________

ECONOMIC DATA

CHIEF PRODUCTS

MONEY

VILLAGE LIFE

CITY LIFE

IMPORTS/EXPORTS

KINDS OF TECHNOLOGY

FORMS OF TRANSPORTATION

FORMS OF COMMUNICATION

LESSON 2

OBJECTIVES:

1. The students will identify and classify the rights listed in the constitutions of six countries on the Pacific Rim.

2. The students will compare their predicted lists of rights with actual rights.

3. The students will analyze differences and similarities.

MATERIALS:

*1 paper plate for each student
*Glue, staplers or tape
*Six copies (one for each group) of Handouts 1-6 (Constitutional Rights from each country), cut into strips.
*Copies of the Constitutional Rights from each country for just the members of that country group (i.e. six members of the China group? Need 6 copies of Handout 6, China's Constitutional Rights.)
*Butcher paper (optional)

PRIOR TO THE LESSON:

1. Cut the Constitutional Rights sheets (Handouts 1-6) into individual strips.

2. Jigsaw the strips. (Each pile of strips should contain the rights from all 6 countries) Make sure there are six piles of strips, each pile containing the rights from China, USSR, Philippines, Canada, Mexico and USA.)

3. Mix well.

PROCEDURES:

4. Begin the lesson by discussing constitutions. Write the word on the board, and ask for a definition.

> A body of basic laws or legal rules for governing a state or country.

Ask: Does a constitution have to be written?

> No. Most constitutions are written today, but until the U.S. Constitution was written in 1787, most countries did not have written constitutions. Great Britain, for example, still does not have a single, written document. The British constitution (which dates from the 13th century) consists of old laws, customs, charters, and other agreements.

Even countries with written constitutions also have unwritten "customs" or customary rules that influence how the country is governed. In the U.S. Constitution, for example, there is no mention of political parties, but they are an integral part of our form of government. The tradition of political parties is a custom, part of our "unwritten constitution."

Today, most countries have written constitutions. Very few countries, however, have "stuck with" their constitution for over 200 years, as the United States has. China, for example, has had four constitutions in less than 40 years! Most constitutions in effect around the world today were written after World War II.

Introduce the idea of bills or declarations of rights:

Tell students that besides setting up a structure and legal rules for a country, the constitution also is to restrain power-holders within a country. That is, the constitution limits and controls the government's power over the people. Tell students that most constitutions include a list of things the government either must do or may not do to its citizens. Some constitutions also include duties of the government, such as the duty to provide housing for its citizens, or medical care. These lists are called a bill of rights, declaration of rights, etc. Tell students that today we will be looking at these lists in our various country's constitutions.

5. Tell the students that today, instead of being reporters, they are going to be **Constitutional Connoisseurs**. They are going to "feast their curiosity" at a Pacific Rim Constitutional Rights Potluck. However, there is a problem. The caterer got the servings all mixed up, so they will have to separate the rights on to individual plates. To facilitate this task, the groups will have to jigsaw.

Jigsaw: One student from each group meets with one student from every other group, i.e. each new group should have a representative from each country being studied.

6. Instruct the students to write their country name on the center of their plate, front and back.

7. Instruct the students to take turns pulling a strip out of the **"potluck pile"** and read it aloud. Students should identify the country it is from. That country representative should attach it to his/her plate. Continue on until all the strips are attached to plates appropriately.

8. Ask the students how they feel about their "meal." Point out the fact that some plates are very "full" and some are quite

sparse. Ask the students to speculate why this might occur. (Later in the lesson, we will consider the fact that some constitutions include social, economic and other types of rights that our U.S. Constitution does not.) Record student observations and generalizations on the board during this activity.

9. Have students return to their country groups. Ask a student to open the lists of predictions in the envelopes from the last lesson. Hand out Constitutional Rights sheets to the appropriate country groups. Have each group compare their predictions with the actual rights from their country's constitution. These could be listed on butcher paper, or on the board.

10. Ask the students to share with the whole class some similarities and some differences they found between their predicted lists and the actual rights.

Note to teacher: The following activity requires students to classify the rights within their country's constitution. If this is a good breaking point, and you may want to stop here, and continue with the rest of the lesson the next class period.

11. Explain that the rights contained in constitutions can be classified into several categories. To help students focus on what kinds of rights are contained in their country's constitution, set up this framework of five topic areas on the board or overhead:

Civil	**Political**	**Economic**	**Social**	**Cultural**	**Group**

12. Pass out Handout 7, and review the information about different categories of rights. Ask each country group to classify their list of rights, using the Handout. There are no "bright lines" about classifying rights, (especially economic, social and cultural) but it is helpful to consider the various classifications in comparing constitutions.

Point out to students that some of our constitutions include duties and responsibilities of citizens. For example, the Chinese Constitution includes almost as many duties as rights. While the U.S. Constitution does not specifically state what duties and responsibilities are expected of its citizens, certain duties are implied. For example, with the right of free speech is implied the duty that citizens will not shout "fire" in a crowded theater. Ask students to list duties they find in their constitutions.

Information in Handout 7:

Civil Rights are personal rights which exist between the individual and the government. Civil rights are limits on the government's power over the individual. The civil right to life means that the government should not kill the individual. Other examples of civil rights include freedom of speech, freedom from torture, right to a fair trial, the right to be presumed innocent until proved guilty, freedom of movement within one's own country and the right to leave and enter one's own country.

Ask if a parent prohibited a child from traveling, would the parent have violated the child's civil rights. The answer is No. Why? Because civil rights apply to governmental action and the parent is not the government.

Political rights are those rights of citizens to form and administer government, like the right to vote and elect the government.

Economic rights have to do with money and government benefits. For example, the right to be supported after retirement is an economic right.

Social rights have to do with health and relations to family members. For example, the right to practice family planning is a social right.

Cultural rights have to do with education, appropriate information, recreation and leisure, artistic and cultural experiences. For example, the right to receive education is a cultural right.

> With economic, social and cultural rights, the government is specifically required to create conditions suitable for enjoyment of political and civil rights. Nations have a duty to create favorable conditions. It is extremely important to have food, clothing, shelter and good health in order to lead a full life on earth. Civil rights such as freedom of religion, of movement and of expression are worthless if those who try to exercise them are poor, hungry and without good health: they will soon die and be unable to use these rights.

Group rights protect a certain group within the population, such as aboriginal peoples or women.

Duties are not specifically spelled out in all constitutions.

Inform students that merely because rights exist on paper, in a constitution, does not insure that they will be enforced or provided in society. If there is not an independent judiciary, a regulated police or a means for controlling government corruption and fraud, these rights may be denied in reality.

Note to teachers: Amnesty International's Annual Report includes lists of human rights' violations by country, and would be an excellent resource to stimulate a discussion about the discrepancy between rights on paper and in reality. Amnesty International, Annual Reports, Amnesty International USA, 322 8th Ave., New York, N.Y. (212) 807-8400.

EXTENSION: Instruct the Constitutional Connoisseurs to add a page in their brochures on the actual rights included in their country's constitution.

We the People

BILL OF RIGHTS AND OTHER RIGHTS FOUND IN THE U.S. CONSTITUTION
Abridged, (1787)

ARTICLE I SECTION 6 USA
Freedom of speech and debate for members of Congress

ARTICLE I SECTION 8 USA
The writ of *habeas corpus* shall not be suspended unless public safety requires it. (*Habeas corpus* is an order requiring the authorities keeping someone in prison to "produce the body" and justify before a judge why they are keeping the person locked up.)

ARTICLE I SECTION 8 USA
No Bills of Attainder or ex post facto laws shall be passed. A bill of attainder is an action of the legislative branch finding someone guilty or imposing punishment without a trial. An *ex post facto* law is a criminal law that operates retroactively to the disadvantage of the accused.

ARTICLE I SECTION 8 USA
No titles of nobility shall be granted by the United States.

ARTICLE III SECTION 2 USA
Jury Trials in Criminal Cases.

ARTICLE III SECTION 3 USA
Treason defined to prevent improper convictions.

ARTICLE VI SECTION 3 USA
No religious test shall ever be required as a qualification to any office under the United States.

FIRST AMENDMENT USA
This amendment guarantees that Congress cannot establish a state religion. It also guarantees the right of freedom of religion, freedom of speech, freedom of the press, the freedom for people to get together peacefully, and the freedom to send petitions to their government.

SECOND AMENDMENT USA
This amendment states that in order to have a prepared military, people are guaranteed the right to keep and bear arms.

THIRD AMENDMENT USA
This amendment states that the government cannot force the people to house and feed soldiers in their homes during times of peace.

FOURTH AMENDMENT USA
This amendment states that people, their homes or their belongings are protected from unreasonable searches or seizures. Warrants may not be issued except upon probable cause, and must specifically describe the place to be searched and the person or thing to be seized.

FIFTH AMENDMENT USA
This amendment guarantees a person accused of a serious crime the right to be charged by a grand jury. Persons cannot be forced to give evidence against themselves. If a person is found not guilty of a crime, he/she cannot be put on trial for the same crime again. Peoples' lives, freedom, or property cannot be unfairly taken from them. The government must pay a person for any property it takes from them for public use.

SIXTH AMENDMENT USA
This amendment guarantees a speedy and public trial by an impartial jury if a person is accused of a crime. The accused has the right to be told what they are accused of. They have the right to a lawyer. They have a right to see and to question those people who accuse them of the crime.

SEVENTH AMENDMENT USA
This amendment guarantees a trial by jury in civil cases. (Disputed between private parties or between the government and a private party.)

EIGHTH AMENDMENT USA
This amendment guarantees that punishment will not be cruel or unusual.

NINTH AMENDMENT USA
This amendment states that just because a right is not listed does not mean it does not exist.

TENTH AMENDMENT USA

This amendment states that the people have all the rights not given to the United States government or forbidden to state governments by the Constitution.

THIRTEENTH AMENDMENT USA (1865)

Slavery shall not be allowed in the United States, or any place subject to U.S. laws.

FOURTEENTH AMENDMENT USA (1868)

All persons born or naturalized in the United States are citizens of the U.S. No state can limit the privileges or immunities of U.S. citizens. No state can take away a person's life, liberty, or property without fair procedures, or deny a person equal protection of the laws. Citizens have the right to travel (court decision interpreting the 14th amendment.)

FIFTEENTH AMENDMENT USA (1870)

Adult male citizens, regardless of race, can vote.

NINETEENTH AMENDMENT USA (1920)

Adult female citizens can vote.

TWENTY-THIRD AMENDMENT USA (1961)

Residents of the District of Columbia can vote in Presidential elections.

TWENTY-FOURTH AMENDMENT USA (1964)

Citizens cannot be required to pay a poll tax to vote.

TWENTY-SIXTH AMENDMENT USA (1971)

Citizens 18 years old and over can vote.

THE BASIC RIGHTS, FREEDOMS, AND DUTIES OF CITIZENS OF THE USSR

Abridged (Written, 1977, Ratified, 1979)

ARTICLE 40: USSR

Citizens of the USSR have the right to work (that is to guaranteed employment and pay in accordance with the quantity and quality of their work, and not below the state-established minimum), including the right to choose their trade or profession, type of job and work in accordance with their inclinations, abilities, training and education, with due account of the needs of society.

ARTICLE 41: USSR

Citizens of the USSR have the right to rest and leisure. This is ensured by a work week not exceeding 41 hours.

ARTICLE 42: USSR

Citizens of the USSR have the right to free medical care and health care protection.

ARTICLE 43: USSR

Citizens of the USSR have the right to maintenance in old age, in sickness, and in the event of complete or partial disability or loss of the breadwinner.

ARTICLE 44: USSR

Citizens of the USSR have the right to housing.

ARTICLE 45: USSR

Citizens of the USSR have the right to education.

ARTICLE 46: USSR

Citizens of the USSR have the right to enjoy cultural benefits.

ARTICLE 47: USSR

Citizens of the USSR, in accordance with the aims of building communism, are guaranteed freedom of scientific, technical, and artistic work.

ARTICLE 48: USSR

Citizens of the USSR have the right to take part in the management and administration of state and public affairs and in the adoption of laws. This is ensured by the opportunity to vote.

ARTICLE 49: USSR

Every citizen of the USSR has the right to submit proposals to state bodies and public organizations for improving their activity and to criticize short comings in their work.

ARTICLE 50: USSR

In accordance with the interest of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions, and demonstrations.

ARTICLE 51: USSR

In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organizations that promote their political activity and initiative and satisfaction of their various interests.

ARTICLE 52: USSR

Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda.

ARTICLE 53: USSR

The family enjoys the protection of the state. Marriage is based on the free consent of the woman and the man; the spouses are completely equal in their family relations.

ARTICLE 54: USSR

Citizens of the USSR are guaranteed inviolability of the person. No one may be arrested except by a court decision or on the issuance of a warrant.

ARTICLE 55: USSR

Citizens of the USSR are guaranteed inviolability of the home. No one may, without lawful grounds, enter a home against the will of those residing in it.

ARTICLE 58: USSR

Citizens of the USSR have the right to lodge a complaint against the actions of officials, state bodies, and public bodies.

ARTICLE 59: USSR

Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations.

ARTICLE 60: USSR

It is the duty of every able-bodied citizen of the USSR to work conscientiously in his chosen, socially useful occupation.

ARTICLE 62: USSR

Citizens of the USSR are obliged to enhance its power and prestige.

ARTICLE 63: USSR

Military service in the ranks of the Armed Forces of the USSR is an honorable duty of Soviet citizens.

ARTICLE 64: USSR

It is the duty of every citizen of the USSR to respect the national dignity of other citizens, and to strengthen friendship of the nations and nationalities of the multinational Soviet state.

ARTICLE 65: USSR

A citizen of the USSR is obliged to respect the rights and lawful interests of other persons, to be uncompromising towards antisocial behavior, and to help maintain public order.

ARTICLE 66: USSR

Citizens of the USSR are obliged to concern themselves with the upbringing of children, to train them for socially useful work and as worthy members of socialist society. Children are obliged to care for their parents and help them.

ARTICLE 67: USSR

Citizens of the USSR are obliged to protect nature and conserve its riches.

ARTICLE 69: USSR

It is the duty of citizens of the USSR to promote friendship and cooperation with peoples of other lands and help maintain and strengthen world peace.

We the People

PHILIPPINES CONSTITUTION, (1987)
ARTICLE III
BILL OF RIGHTS

SECTION 1. PHILIPPINES

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

SECTION 2. PHILIPPINES

The right of the people to be secure in persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

SECTION 3. PHILIPPINES

(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

SECTION 4. PHILIPPINES

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

SECTION 5. PHILIPPINES

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

SECTION 6. PHILIPPINES

The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

SECTION 8. PHILIPPINES

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

SECTION 9. PHILIPPINES

Private property shall not be taken for public use without just compensation.

SECTION 10. PHILIPPINES

No law impairing the obligation of contracts shall be passed.

SECTION 11. PHILIPPINES

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

SECTION 12. PHILIPPINES

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

SECTION 14. PHILIPPINES

(1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

SECTION 15. PHILIPPINES
The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

SECTION 16. PHILIPPINES
All persons shall have the right to a speedy trial before all courts.

SECTION 17. PHILIPPINES
No person shall be compelled to be a witness against himself.

SECTION 18. PHILIPPINES
(1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

SECTION 19. PHILIPPINES
(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to life imprisonment.

SECTION 20. PHILIPPINES
No person shall be imprisoned for debt or non-payment of a poll tax.

SECTION 21. PHILIPPINES
No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

We the People

CONSTITUTION OF MEXICO, INDIVIDUAL GUARANTEES
Abridged (Written, 1917,
Revised, 1988)

ARTICLE 1: MEXICO
Every person in the United Mexican States shall enjoy the guarantees granted by this Constitution, which cannot be restricted or suspended except in such cases and under such conditions as are herein provided.

ARTICLE 2: MEXICO
Slavery is forbidden in the United Mexican States.

ARTICLE 3: MEXICO
Elementary education shall be required and free.

ARTICLE 4: MEXICO
Men and women are equal before the law. The law shall protect the organization and development of the family. Every person has the right to decide in a free, responsible and informed manner on the number and spacing of their children.

Every person has the right to health protection and proper housing.

ARTICLE 6: MEXICO
The expression of ideas shall not be investigated unless it offends good morals, infringes the rights of others, incites to crime or disturbs public order.

ARTICLE 7: MEXICO
Freedom of writing and publishing writings on any subject is inviolable. No law or authority may establish censorship.

ARTICLE 8: MEXICO
Public officials and employees shall respect the exercise of the right of petition, provided it is made in writing and in a peaceful and respectful manner, but this right may only be exercised in political matters by citizens of the Republic.

ARTICLE 9: MEXICO
The right to assemble or associate peaceably for any lawful purpose cannot be restricted.

ARTICLE 10: MEXICO
The inhabitants of the United Mexican States are entitled to have arms in their possession in their homes for their protection and legitimate defense, except those deliberately forbidden by law.

ARTICLE 11 : MEXICO
Everyone has the right to enter and leave the Republic, to travel through its territory and to change his residence without necessity of a letter of security, passport, safe-conduct or any other similar requirement.

ARTICLE 12: MEXICO
No titles of nobility shall be granted in the United Mexican States, nor shall any effect be given to those granted by other countries.

ARTICLE 13: MEXICO
No one may be tried according to private laws or by special tribunals.

ARTICLE 14: MEXICO
No person shall be deprived of life, liberty, property, possessions or rights without a trial before a court following formal procedures.

ARTICLE 16: MEXICO
No one shall be molested in his person, family, domicile, papers, or possessions except upon a written order of the competent authority stating the legal grounds and justification of the action taken. No one may be arrested unless charged with a specific crime.

ARTICLE 19: MEXICO
No detention shall exceed three days without a formal order of commitment, which shall state: the offense which the accused is charged; the elements thereof; the place, time, and circumstances; and the facts brought to light in the preliminary examination.

ARTICLE 20: MEXICO
In every criminal trial, the accused shall enjoy the following guarantees:

* release on bail if crime is not punishable by more than 5 years in jail.
* may not be forced to testify against himself.
* notified within 48 hours the name of his accuser and the nature of the accusation.
* shall be confronted with the witnesses against him and have the right to cross-examine them.
* shall be given time to gather witnesses and evidence in his defense.
* entitled to a public trial.
* shall be tried within four months.
* shall speak for himself, or have a lawyer, or both.

ARTICLE 21 : MEXICO
Judges shall determine all penalties.

ARTICLE 22: MEXICO
Extreme and unusual punishment is prohibited.

ARTICLE 24: MEXICO
Everyone is free to practice the religion of his choice and to practice all ceremonies, devotions or observances provided they do not offend any laws.

ARTICLE 29: MEXICO
In the event of invasion, serious disturbance of the public peace, or any other event which may place society in great danger of conflict, only the President of the Mexican Republic, with the consent of certain head officials, may suspend throughout the country the guarantees of this document.

We the People

CANADIAN CONSTITUTION
ARTICLES OF RIGHTS, (1982)

Guarantee of Rights and Freedoms (CANADA)

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set put in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms (CANADA)

2. Everyone has the following fundamental freedoms:
a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

Democratic Rights (CANADA)

3. Every citizen of Canada has the right to vote in elections.

Mobility Rights (CANADA)

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.

Legal Rights (CANADA)

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Legal Rights (CANADA)

8. Everyone has the right to be secure against unreasonable search or seizure.

Legal Rights (CANADA)

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Legal Rights (CANADA)

10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Legal Rights (CANADA)

11. Any person charged with an offense has the right (a) to be informed without unreasonable delay of the specific offense; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of the offense; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; and (e) not to be denied reasonable bail without just cause

Legal Rights (CANADA)

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Legal Rights (CANADA)

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate the witness in any other proceeding, except in a prosecution for perjury or for the giving of contradictory evidence.

Legal Rights (CANADA)

14. A party or witness in any proceeding who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights (CANADA)

15. (a) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

Rights of the Aboriginal Peoples of Canada (CANADA)

35. The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

We the People

THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA
Abridged (1982)

CHAPTER TWO: THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

ARTICLE 33: (CHINA)

All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

All citizens of the People's Republic of China are equal before the law.

Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

ARTICLE 34 (CHINA)

All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.

ARTICLE 35 (CHINA)

Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

ARTICLE 36 (CHINA)

Citizens of the People's Republic of China enjoy freedom of religious belief.

No state organization, public organization or individual may compel citizens to believe in, or not to believe in, any religion, nor may they discriminate against citizens who believe in, or do not believe in, any religion.

ARTICLE 37 (CHINA)

The freedom of person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organization.

Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

ARTICLE 38 (CHINA)

The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.

ARTICLE 39 (CHINA)

The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited.

ARTICLE 40 (CHINA)

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law.

ARTICLE 41 (CHINA)

Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organization or functionary.

ARTICLE 42 (CHINA)

Citizens of the People's Republic of China have the right as well as the duty to work.

Work is the glorious duty of every able-bodied citizen.

The state provides necessary vocational training to citizens before they are employed.

ARTICLE 43 (CHINA)

Working people in the People's Republic of China have the right to rest.

ARTICLE 44 (CHINA)

The livelihood of retired personnel is insured by the state and society.

ARTICLE 45 (CHINA)

Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled.

ARTICLE 46 (CHINA)

Citizens of the People's Republic of China have the duty as well as the right to receive education.

The state promotes the all-round moral, intellectual and physical development of children and young people.

ARTICLE 47 (CHINA)

Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits.

ARTICLE 48 (CHINA)

Women in the People's Republic of China equal rights with men in all spheres of life, political, economic, cultural and social, including family life.

ARTICLE 49 (CHINA)

Marriage, the family and mother and child are protected by the state.

Both husband and wife have the duty to practice family planning.

Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents.

ARTICLE 51 (CHINA)

The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.

ARTICLE 52 (CHINA)

It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

ARTICLE 53 (CHINA)

Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property and observe labor discipline and public order and respect social ethics.

ARTICLE 54 (CHINA)

It is the duty of citizens of the People's Republic of China to safeguard the security, honor and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland.

ARTICLE 55 (CHINA)

It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression.

It is the honorable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

ARTICLE 56 (CHINA)

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

We the People

UPSICEL Unit Three, Lesson 2
Handout 7

CLASSIFYING RIGHTS

Civil Rights are personal rights which exist between the individual and the government. Civil rights are limits on the government's power over the individual. The civil right to life means that the government should not kill the individual. Other examples of civil rights include freedom of speech, freedom from torture, right to a fair trial, the right to be presumed innocent until proved guilty, freedom of movement within one's own country and the right to leave and enter one's own country.

Political rights are those rights of citizens to form and administer government, like the right to vote and elect the government.

Economic rights have to do with money and government benefits. For example, the right to be supported after retirement is an economic right.

Social rights have to do with health and relations to family members. For example, the right to practice family planning is a social right.

Cultural rights have to do with education, appropriate information, recreation and leisure, artistic and cultural experiences. For example, the right to receive education is a cultural right.

With economic, social and cultural rights, the government is specifically required to create conditions suitable for enjoyment of political and civil rights. Nations have a duty to create favorable conditions. It is extremely important to have food, clothing, shelter and good health in order to lead a full life on earth. Civil rights such as freedom of religion, of movement and of expression are worthless if those who try to exercise them are poor, hungry and without good health: they will soon die and be unable to use these rights.

Group rights protect a certain group within the population, such as aboriginal peoples or women.

Duties or responsibilities are not specifically spelled in all constitutions.

Using the following chart, classify the rights in your country's constitution into the categories listed. Your country may not include rights in every category. For example, some countries may only have two or three types of rights. List Duties also.

Civil

Political

Economic

Social

Cultural

Group

Duties

LESSON 3

OBJECTIVES:

1. The students will determine the purpose of a preamble in a constitution.
2. The students will create a preamble for their country's constitution.
3. The students will share their preambles orally.

MATERIALS:

*Copies of U.S. Preamble and Preamble from Vanuatu
*Copies of the preambles from China, Philippines, and the USSR. (The constitutions of Canada and Mexico do not have preambles.)

PRIOR TO LESSON:

1. Copy U.S. Preamble and Preamble from Vanuatu for every student.

PROCEDURES:

2. Distribute copies of the preamble from the U.S. Constitution and the preamble from Vanuatu's constitution. Ask students to read the preambles aloud to the rest of the class.

3. Ask the students to determine the purpose of a preamble.

> A preamble states the objectives of the constitution -- what its authors hope the constitution will achieve for the country and its citizens. The Preamble also tells who is making the constitution.

4. Ask students, either working in pairs, or individually, to list the objectives of the two constitutions, based on the preambles. Ask them to try to come up with two or three words to express the objectives. To reinforce the meaning of the words chosen to represent the objectives, ask students to think of the opposite (antonym) of each word. For example, the antonym of freedom could be slavery.

> The U.S. Constitution list includes: to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty. Summarized: justice, liberty, order.

The Vanuatu Constitution list includes: to safeguard freedom; cherish ethnic, linguistic and cultural diversity; and preserve traditional Melanesian values, faith in God and Christian principles. Summarized: freedom, culture, values.

5. Ask: what are the similarities between these two preambles? What are the differences?.

6. Instruct the students to create, either individually or in their country group, a preamble for their country's constitution. Suggest they first decide what their objectives are, and work from there.

Note to Teacher: You might want to try a strategy called Think-Pair-Share for writing the preamble. Put students into pairs. Give each student 3 or 4 sentence strips or blank strips of paper. Ask each student to write down one thought or statement on each strip that they think ought to be in the preamble. When they are finished, ask them to share with their partner. Then, have the partners physically manipulate the strips into a single, cohesive, pleasing pattern for a preamble. They can add more, delete, or rewrite. They can join with another pair and share. This manipulation of the strips should continue until the pair(s) is/are satisfied with the results.

7. Provide time for the students to share their preambles.

8. Distribute the copies of the preambles from the countries being studied. Compare student preambles to actual preambles. Ask students to identify differences and similarities, working in their country groups. Allow students from Mexico and Canada to join other groups for this process.

EXTENSION: Instruct Constitutional Connoisseurs to add a preamble page to their brochure.

We the People

UNITED STATES PREAMBLE (1787)

WE THE PEOPLE OF THE UNITED STATES
IN ORDER TO FORM A MORE PERFECT UNION,
ESTABLISH JUSTICE,
INSURE DOMESTIC TRANQUILITY,
PROVIDE FOR THE COMMON DEFENSE,
PROMOTE THE GENERAL WELFARE,
AND SECURE THE BLESSINGS OF LIBERTY
TO OURSELVES AND OUR POSTERITY,
DO ORDAIN AND ESTABLISH THIS CONSTITUTION
FOR THE UNITED STATES OF AMERICA.

VANUATU PREAMBLE (1980)

WE THE PROUD PEOPLE OF VANUATU,
PROUD OF OUR STRUGGLE FOR FREEDOM,
DETERMINED TO SAFEGUARD THE ACHIEVEMENTS
OF THIS STRUGGLE,
CHERISHING OUR ETHNIC, LINGUISTIC AND
CULTURAL DIVERSITY,
MINDFUL AT THE SAME TIME OF OUR DESTINY,

HEREBY PROCLAIM THE ESTABLISHMENT OF THE
UNITED AND FREE REPUBLIC OF VANUATU
FOUNDED ON TRADITIONAL MELANESIAN VALUES,
FAITH IN GOD,
AND CHRISTIAN PRINCIPLES,

AND FOR THIS PURPOSE GIVE OURSELVES THIS
CONSTITUTION.

(Vanuatu used to be called the New Hebrides. It is a small island nation in the southwest Pacific.)

USSR PREAMBLE (1977)
(Abridged)

...The highest goal of the Soviet state is the building of a classless communist society in which social communist self-government will be developed. The main tasks of the socialist all-people's state are: to create the material and technical basis of communism; to perfect socialist social relationships and their transformation into communist relationships; to rear members of a communist society; to raise the material and cultural level of the life of the working people; to ensure the security of the country; and to promote the strengthening of peace and the development of international cooperation.

The Soviet people,...affirm the foundations of the social system and the policies of the USSR, establish the rights, freedoms, and obligations of citizens, and the principles of organization and the aims of the socialist all-people's state and proclaim them in this Constitution.

PHILIPPINES PREAMBLE

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate the Constitution.

CHINA PREAMBLE (1982)
(Abridged)

China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition....

This constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state in legal form; it is the fundamental law of the state, and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the constitution and ensure its implementation.

LESSON 4

OBJECTIVES:

1. The students will demonstrate different perspectives by writing their views of constitutional rights as if they were citizens of that country.
2. The students will personalize constitutional rights from various countries.
3. The students will identify the value or importance of constitutional rights.

MATERIALS:

*Constitutional Rights sheets (from Lesson 2)

PRIOR TO LESSON:

1. Have extra copies of the Constitutional Rights sheets available in case students have misplaced theirs.

PROCEDURES:

2. Have the students recall what roles they have played in our exploration of Constitutional Rights **[reporters, connoisseurs, and framers of constitutions]**. Today they are going to be philosophers, people who think seriously about issues and topics that matter.

3. Ask the students if they ever have conversations inside their heads, if they ever **think** both sides of a conversation. Mention that many of us do and it is often very helpful. We can plan, ramble on, or revise without anyone ever knowing, but us! This process is called **interior monologues**.

Note to Teacher:
Interior monologues[1] provide students an opportunity to explore a topic in depth. This strategy is also a way for students to make a topic more personal. While there is no formal structure, some of them become quite stylized. There are two formats for interior monologues:

1. It can be an opportunity for one character or writer to pretend that he/she is talking to someone else. The narrator introduces him/herself and then proceeds to tell

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[1] The format for the interior monologue comes through Marj Montgomery and her students from Day Junior High in Newton, Massachusetts. Two examples from Rick Moulden's Chinook Middle School students, Bellevue, Washington are included.

the other person some of his/her innermost thoughts. The narrator can ramble on and explain in some detail because it is assumed that the person to whom the narration is addressed will never actually hear the thoughts.

2. Student actually writes his or her own thoughts about the topic or issue into an interior monologue. They do not need to introduce themselves: they are simply talking inside their own minds. It is the depth of thought that counts. In fact, it is similar to poetry. This is a good way to get students to take a personal stand on an issue, in this case, the constitutional rights of the country they are focusing on.

4. Ask students to read the two examples from Chinook Middle School. Discuss.

5. Assign the students the task of writing an interior monologue about the importance of constitutional rights in their country or about the value of one of the amendments in the U.S. Bill of Rights.

EXTENSION: Instruct students to draw a cartoon for the brochure that spoofs or demonstrates the interior monologue the student created for this lesson.

INTERIOR MONOLOGUE ON THE FILIPINO CONSTITUTION

The Filipino constitution was signed on Monday, February 2, 1987. Personally, I don't see how a constitution that is this young can survive the test of time if the government is not committed to supporting it. The constitution is a lot like our own. Our constitution has stood the test of time, but I don't think this will be able to. How can their constitution live up to ours when the government which is supposed to represent the people doesn't even pay attention to them? I don't think that the government that the constitution sets up is working. The peoples rights have been taken away even though the constitution forbids it. Corazon Aquino has taken over the government and is using the army to take control of the people, even though in the constitution it states that power comes from the people, not from the government. I really don't see how this constitution can survive. This constitution is collapsing along with the government. You can ask any Filipino person who was recently in the Philippines and they will say that the government stinks. The government is not sensitive to the needs of the people. Maybe, if they would read the constitution they might know what they are supposed to do. This constitution is not serving its purpose and the government doesn't seem to care! I don't believe that this country will survive much longer unless something is done about this problem. The people of the Philippines need to take control but they can't because the government is using the army to keep "them" in control. The government is using the army to keep itself in power. This situation is highly unconstitutional and would never be allowed in the US. It's hard to demand a change in government policy, however, when you are looking down the barrel of a gun. The Philippines needs help, but isn't getting any. We can only hope for a change in the future because I don't see how the U.S. can do anything about this short of invading the Philippines! Personally, I think that unless something is done about this problem the Philippines will eventually go into a civil war with the people against the government! If a civil war were to occur it might form a better government for them or it might form a government which is even worse for the people. We'll just have to wait and see.

INTERIOR MONOLOGUE ON THE SIXTH AMENDMENT

I am Morris Klint of Amesbury, Massachusetts. I am serving ten to twenty years for a crime I had nothing to do with. I was convicted for the robbery of Parks General Store. With new Amendment Six of yours, many felons are getting fair trials, since I was convicted prior to this new amendment, I didn't get a fair trial. I didn't even get a jury. Don't I deserve a fair trial? I think it is only right for me and for all the other criminals in jail, to have a retrial. Isn't that the way it should be?

I think that if I was tried again, I would be found not guilty. The robbery I was supposedly involved in was a crime concerning one hundred dollars. I feel that a jury would greatly help my case. A jury has proven to be an asset in most cases. I feel that where a judge or lawyer may forget where justice lies, a jury can be of great importance. In my case which was quite circumstantial, with the presence of a jury, justice would be found.

Right now I am living in a world of trouble. My wife and children are starving. The family business is going down the drain. Here I sit in jail with nothing to do. An accurate trial is all I want. Then you will see who the guilty one is. And I'll promise you that it is not me. All I want is a free trial. Isn't that my right?

(The student author is responsible for historical accuracy and proofreading.)

SIXTH AMENDMENT (1791):

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

LESSON 5

OBJECTIVES:

1. The students will explore constitutional rights from opposing points of view.
2. The students will examine constitutional rights in constitutions from various countries.
3. The students will make personal value judgments about constitutional rights.

MATERIALS:

*Samples of Poems for 2 Voices

PRIOR TO THE LESSON:

1. Copy Samples of Poems for 2 Voices for the students.

PROCEDURES:

2. Hand out copies of Samples of Poems for 2 Voices. Ask for volunteers to read the samples aloud.

3. Ask the students what they notice about these poems.

Note to Teacher:

Poems for 2 Voices[1] offer a wonderful way to present two perspectives or opposing points of view. Students can do these individually or in pairs, but either way, the poem is a dialogue for two opposing points of view. These are best read aloud by two people.

The structure is quite simple. Each voice speaks individually and then the two voices speak together, commenting on something on which they agree or agree to disagree. It is best to skip lines and to put the voices in the sequence that they are to be read aloud:

VOICE ONE

VOICE TWO

THINGS AGREED UPON
TO BE READ JOINTLY

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[1] This idea comes from Fleischman's Poems for Two Voices by the way of Marj Montgomery and her students from Day Junior High in Newton, Massachusetts. Rick Moulden's students from Chinook Middle School, Bellevue provided the samples.

Teachers who have used this strategy in their classes say the actual length is up to the author(s), but there needs to be enough written so that the ideas are explored in depth. It is also important to remember that the two sides do not have to agree by the end of the poem. They may simply agree that they cannot agree on the issue.

4. Ask the students to work individually or in pairs to compose a poem for two voices which either takes two opposing points of view on any amendment in the US Bill of Rights or contrasts the constitutional rights of one nation with another. Suggest that the students work "cross country" to get two very different voices if they are having trouble getting started.

5. Ask the poets to read their poems to the class.

EXTENSION: Ask the Constitutional Connoisseurs to put a verse or two of their poem in their brochure.

We the People

POEM FOR TWO VOICES
ON THE CHINESE CONSTITUTION
BY ELISA MANDELL

HI! I'M WINNIE.

HI! I AM ELISA!

WE ARE DISCUSSING THE CHINESE CONSTITUTION
AND THE UNITED STATES CONSTITUTION.

I THINK THAT THE CHINESE CONSTITUTION
IS GREAT AND THAT
IT HAS WONDERFUL DEPTH AND DETAIL.

I THINK THAT IT'S GOOD BUT IT MAY BE A
LITTLE TOO HARSH AND NIT-PICKY IN WAYS.

IN WHAT WAYS HARSH?

WELL, IN SOME WAYS. IT TELLS PEOPLE HOW
TO RUN THEIR LIVES AND IT GOES INTO TOO
MUCH DETAIL.

BUT THAT'S GOOD BECAUSE IF THE
RULES ARE MORE STRICT, THEN
THERE WILL BE LESS CRIME. I'VE
NOTICED THAT THE CRIME LEVEL IN
YOUR COUNTRY IS HIGH.

BUT THAT'S NOT THE FAULT OF THE
CONSTITUTION. IT'S THE FAULT OF THE
PEOPLE WHO BREAK THE LAWS. AND THEY GET
PUNISHED FOR IT.

WE JUST DON'T AGREE.

WELL, YOU KNOW, THE CHINESE
CONSTITUTION DOES GIVE SOME
GUIDELINES THAT ARE VERY
HELPFUL TO THE PEOPLE.
I GUESS I CAN AGREE WITH THAT. BUT, THE
UNITED STATES CONSTITUTION GIVES AMERICANS
MORE FREEDOM AND MORE INDEPENDENCE.

I CAN UNDERSTAND THAT, TOO.

I GUESS BOTH CONSTITUTIONS
JUST REFLECT THE DIFFERENT
LIFESTYLES OF THE PEOPLE AND
BOTH SHOULD BE RESPECTED.

We the People

POEM FOR TWO VOICES ON THE FIFTH AMENDMENT
BY KARA HOFFMAN

I AM A LOYAL CITIZEN OF THIS COUNTRY.

I AM ALSO A LOYAL CITIZEN OF THIS
COUNTRY.

I PERSONALLY DON'T LIKE THE FIFTH
AMENDMENT. I THINK THAT IT IS UNFAIR. I
WOULD LIKE TO SEE IT ABOLISHED.

ABOLISHED. NEVER. I THINK THAT THE FIFTH
AMENDMENT DOES A LOT FOR OUR COUNTRY.

BUT IT SLOWS DOWN OUR JURY SYSTEM.

I KNOW IT SLOWS DOWN OUR JURY SYSTEM BUT
IT IS FAIR TO THE CRIMINALS.

BUT IF THE CRIMINALS HAVE ALREADY DONE
THE CRIME, WHY WASTE TIME TRYING THAN?

SOMETIMES THE PEOPLE HAVEN'T COMMITTED
THE CRIME AND THAT'S NOT FAIR TO PUT THEM
IN JAIL.

BUT IF THEY HAVE, WE WASTE A WHOLE LOT OF
TIME TRYING THEM AND THEN FINDING OUT
THAT THEY ARE GUILTY.

BUT THEN AT LEAST WE KNOW THAT WE ARE
PUTTING THE RIGHT MAN IN JAIL.

I STILL DON'T AGREE WITH YOU.

JUST THINK HOW YOU WOULD FEEL IF YOU WERE
PUT IN JAIL FOR SOMETHING YOU DIDN'T DO
AND YOU COULDN'T SAY ANY THING ABOUT IT.
WOULDN'T YOU BE MAD?

I WOULD BE MAD.

SO IT DOES PROVIDE A SAFEGUARD.

YOU'RE RIGHT!

SO, THE FIFTH AMENDMENT MAY SLOW THINGS DOWN
BUT IT DOES KEEP THINGS FAIR.

LESSON 6

OBJECTIVES:

1. The students will prioritize constitutional rights.

2. The students will work cooperatively to reach small group consensus.

3. The students will analyze possible outcomes.

MATERIALS:

*Constitutional Rights sheets
*Butcher paper
*One colored marking pen for each student, the same color for each member of a country group

PRIOR TO LESSON:

1. Have copies of the Constitutional Rights sheets from every country on hand for those students who need them.

PROCEDURES:

2. Give each member of a country group the same colored marking pen.

3. Jigsaw the groups. (One student from each group joins with one student from every other group to form new groups.) Have them take their marker.

4. Place a large piece of butcher paper in the center of each group.

5. Tell the students they have 10 minutes to generate as many rights as they think people ought to have guaranteed by their constitutions. They can make up their own or take them from the Constitutional Rights sheets. However, they have to take turns and each group member must write the Right on the butcher paper with his/her colored marker. The next person cannot start until the previous member has identified the right he/she is going to do. **Remember, these are rights that you think are important to be protected by the constitution of any country. Do not repeat each other. Listen and make quick decisions. The more you can generate, the happier you'll be with the next activity.**

6. Stop after ten minutes. Ask each student to put a star by the five most important rights. Each student should still use his/her colored marker.

7. Ask one student who can write quickly in each group to recopy the starred rights on a lined piece of paper, putting the right(s) with the most stars at the top and working down, in

descending order. Ask the others to identify the order and read them out to the copier to make this process move along quickly.

8. Ask each student to look at their group list. The list is going to be passed around the circle 5 times to determine the rights most important to that group:

-On the first pass, each student should mark the right he/she values most (wouldn't want to live without) and give it 15 points.
-On the second pass, each student should mark the second most important right and give it 10 points.
-On the third pass, each student marks 5 points.
-On the fourth pass, mark 3 points.
-On the fifth and final pass, mark 1 point.
Add up the points. Make a list of the rights for each group in descending order (most important first).

9. Share the prioritized lists with the other groups. Pick out those rights that appear most often in all lists. Keep a tally on the board of the rights with the most points.

10. Ask students to look at the U.S. Bill of Rights. Compare those rights with the ones that received the most points.

11. If students have lists very different from the U.S. Bill of Rights, ask how our lives might be different if we had those rights instead of the ones we do have.

12. Ask students to turn in their lists.

EXTENSION: Instruct the students to make a page featuring "Our Valuable Rights" made up of the most important rights from each group for the brochure.

LESSON 7

OBJECTIVES:

1. The students will identify the most important rights to young people by surveying their peers.
2. The student will survey adults to determine the most important rights to adults.
3. The students will make inferences about the results of their surveys.

MATERIALS:

*Student or teacher-made survey from the lists compiled in the previous lesson on Survey Form, Handout 1

PRIOR TO LESSON:

1. Using the top 10-15 rights from the students' prioritized lists generated in the last lesson, create a survey using the Survey Form provided or instruct students to devise their own. [NOTE: ALL STUDENTS NEED TO SURVEY THE SAME LIST OF RIGHTS.]

2. Make a copy of the survey for each student.

PROCEDURES:

3. Ask the students what they know about surveys. Mention that some are carefully designed and monitored to provide accurate and reliable data. Others, like the TV telephone surveys, are just an indication of some people's feelings. We're going to survey people's feelings about constitutional rights. What kind of survey do the students think we can do? It will be more like the TV survey, an indication about some people's feelings.

4. Ask the students if they think every human being in the world should have certain rights guaranteed. Would they be the rights we came up with last class?

Their survey will be to find out if others think all people should have certain rights (universal human rights) guaranteed. They will also try to find out what rights people think are the most important to all people. Hand out the survey.

5. Give instructions for the survey:

A. Interview five students (any age). They do not need to record the names of the people they interview.
B. Interview two adults.
C. Bring your filled out survey form to the next class period.

SURVEY DIRECTIONS: Read the following:
"I am interested in finding out how you feel about human rights. Do you think every person in the world should have certain rights guaranteed to them? Please answer yes or no.

(If answer is no, stop the survey. Go to another person.)
(If answer is yes, continue.)

"I am going to read some rights to you. Please tell me if you think the right is essential for all humans or nice but non-essential."
(Mark E for essential, N for nice but non-essential.)

(When the list of questions is complete. Ask, "Is there a right that you feel should be added to the list as essential?" Write down the addition on the back of the survey paper.)

6. After the students have completed their surveys, compile the data. (For example, make an overhead transparency of the survey form and collect information from each student or create a large butcher paper form for the students to record their data on.) Analyze the data through discussion or individual student essays or group presentations. Explore implications of the data through discussion and/or written work.

NAME OF STUDENT: ______________________________

"I am interested in finding out how you feel about human rights. Do you think every person in the world should have certain rights guaranteed to them? Please answer yes or no." (IF NO, STOP SURVEY. IF YES, CONTINUE.)

"I am going to read some rights to you. Please tell me if you think the right is essential for all humans or nice but non-essential. (MARK E FOR ESSENTIAL, N FOR NON-ESSENTIAL. WHEN THE LIST IS COMPLETE, ASK:)

"Is there a right you feel should be added to the list as essential?" (WRITE THE ADDITION ON THE BACK OF THE SURVEY.)

PERSONS RESPONDING TO THE SURVEY

	1	2	3	4	5	6	7
AGE							
RIGHTS							

LESSON 8

OBJECTIVES:

1. The students will compare The Universal Declaration of Human Rights (UDHR), The U.S. Bill of Rights and the results of their survey.

2. The students will distinguish between "human rights" and "constitutional rights."

USE OF OUTSIDE RESOURCE PERSONS:

A representative of the United Nations Agency-Seattle could make a presentation on The Universal Declaration of Human Rights (UDHR) and how it is observed/not observed in various countries of the world.

MATERIALS:

*Handout 1, **Rights** (overhead and student copies)

PRIOR TO THE LESSON:

1. Make overhead and copies for students, Handout **Rights**.

PROCEDURES:

2. Introduce the idea of "human rights" by brainstorming a definition:

Note to Teacher:
Humans rights are the fundamental freedoms and protections to which all human beings are entitled simply because they are human. Human rights are not created by law but are a part of every person; they are not granted by the state or governments (although some governments write these human rights in their constitutions); a person is born with them.

Explain that human rights mean that all human beings are born free and equal in dignity and rights, that they are endowed with reason and conscience and that they should act towards one another in a spirit of brotherhood.

3. Put the Handout, **Rights** on the overhead, displaying only The Universal Declaration of Human Rights Summary. Remind students of the types of rights we studied in Lesson 2 (civil, political, economic, etc). Tell them there is another way we can classify rights: that is, as either legal rights or moral rights.[1]

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[1] Some concepts regarding moral and legal rights adapted with permission from "Human Rights for All: A Curriculum for a New South Africa," Joint Project of Lawyers for Humanm Rights, The

Legal rights are laid down by law, and can be defended in a country's courts of law. Legal rights are not always regarded as moral. For example, before the U.S. Constitution was amended to abolish slavery, it was legal to own slaves in the U.S. This was immoral, but it was "legal."

Moral rights are based on general principles of fairness and justice. Often, they are based on religious beliefs. Sometimes an action may be considered morally correct, but not legal. For example, during the civil rights struggle in the 1960's, demonstrators broke laws, but their actions were considered morally correct.

Human rights are universal moral rights that may also be legal rights.

Note to Teacher:
Explain that in 1948 these concepts were made part of The Universal Declaration of Human Rights by the United Nations. The UDHR was drafted and adopted by the General Assembly of the United Nations after World War II, as a reaction to the killing of six million Jews by the Nazis.

4. Compare the Universal rights to the rights selected as essential on the student survey. List on the board or overhead the rights that appear on both lists. Decide whether the rights are "legal" rights or "moral" rights.

5. Uncover the U.S. Bill of Rights on the overhead. Read through each amendment and identify which rights now on the board are in the Bill of Rights.

The Bill of Rights does not include all of the rights listed.

Ask students whether this means we do not have those rights as Americans?

We do have many of these rights, but they are not all written into our Constitution and Bill of Rights. Some have been added by **court decisions**, when the federal courts interpret the Constitution and Bill of Rights, and some are part of our written laws or customs.

6. Tell the students they are now going to be the editors of a large and influential newspaper. They are to write an editorial that either proposes ways to energize and promote universal human rights, or the examination and rededication to constitutional

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National Institute for Citizen Education in the Law, and the Centre for Socio-Legal Studies, Univ. of Natal, Draft, 1991.

rights in this country. This writing should be thoughtful, based on the knowledge gained in this unit. Give students copies of the Handout, **Rights**.

Note to Teacher:
Brainstorming titles can help students focus and get started on writing projects. Some possible "starters":

Let's Get It Right!
Writing Rights For All
There Is a Right Way For Everyone
Using the Constitution the Right Way
It's Right for All Human Beings
Making Rights A Reality
World Rights

EXTENSION: Put the editorial in the brochure.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (SUMMARY)

All human beings have the right:

* to life, liberty and the security of person
* to freedom from slavery and discrimination
* to a family and to marry
* to own property
* to a nationality and to participate in government
* to education, work, rest and leisure
* to an adequate standard of living and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control

THE UNITED STATES BILL OF RIGHTS (SUMMARY)

1. People have the right to freedom of religion, freedom of speech, to come together in a peaceful way and to send petitions to their government.

2. People have a right to keep and bear arms, in order to have a prepared military.

3. People do not have to house and feed soldiers in their homes during times of peace.

4. People, their homes or their things may not searched unreasonably.

5. People accused of serious crimes must be accused by a jury. They cannot be forced to give evidence against themselves. They cannot be tried for the same crime again. They cannot have their lives, freedom or property taken from them unfairly. The owner must be paid by the government for property taken for public use.

6. People have the right to a speedy and public trial. They have the right to know what they are accused of. They have the right to a lawyer and a trial by jury. They have a right to see and question those who accuse them.

7. In civil cases, there must be a right to a trial by jury.

8. Cruel and unusual punishment is not allowed.

9. and 10. The states and the people have all the rights that are not given to the United States government and not forbidden to a state government.

LESSON 9

OBJECTIVES:

1. The students will demonstrate knowledge of the constitutional rights sections of certain countries on the Pacific Rim and the U.S. Bill of Rights by creating a classroom newspaper, **Rights Around the Rim**.

2. The students will cooperatively organize, create, and produce a classroom newspaper.

MATERIALS:

*Classroom supplies, 6 manila envelopes or file folders
*Access to copy machine that has capacity to reduce **or**
*Computer program for producing newspapers in the classroom
*Newspaper (optional)

PRIOR TO LESSON:

1. Label manila envelopes or file folders, one for each country group.

PROCEDURES:

2. Direct students to return to their country groups.

3. Tell the students that as a culminating activity, they are going to jointly create a newspaper, **Rights Around the Rim**, to share what they have learned about the constitutional rights of other countries and how those rights compare to the U.S. Bill of Rights. Each group needs to choose an editor for their contribution. Discuss the qualities of an editor (can spell, writes well, works well with others, organized, responsible.) Ask each group to identify their editor.

4. Brainstorm sections of a newspaper. (You might want to bring in a real newspaper to act as a prompt.)

> Common sections of newspapers include Editorials, News Articles, Special Features, Regional News, Religion, Sports, Horoscope, Deaths, Comics, Classified, Crossword and Puzzles, Business, Dear Abby, Movies, and Advertising.

5. Tell the students that each group is responsible for creating a page featuring their country with a focus on the constitutional rights of that country. Each student must contribute a minimum of two articles for the paper which are acceptable to the editor and are handed in by the deadline.

Note to Teacher:
If the students are not using a computer program designed for classroom newspapers, try the following strategy:

Cut classroom notebook paper in half lengthwise. This half sheet becomes a "column." Instruct students to Title, By-line and Date Line the beginning of each article. Print the article in pencil. Turn into the editor for proofing. After corrections, go over the article in fine-tip black felt pen. Turn in. All other kinds of material (cartoons, graphs, surveys, etc.) should be one or two "columns" wide, depending on nature of material and should be done in fine-tip black felt pen.

Using the reducing capability of a copy machine, reduce all the articles by the same percentage. Have editors of each paper meet to agree on format and paste up the reduced copy on the largest size of paper the copy machine can reproduce. Copy each page and collate into a newspaper. Don't forget the masthead on the front page. (See following sample)

Some teachers may want to grade the pages by group. Others may want to create a test based on the contents of the articles. Others may use the paper to evaluate the unit's effectiveness as a whole.

6. Set a reasonable deadline (one to two class periods is adequate). Meet with the editors to help them keep on track. Publish newspaper, sending copies to your superintendent, principal, PTSA president, parents and others.

7. Take at least one reading period to read the newspaper and evaluate it as a class.

EXTENSION: Share the brochures that were made during the unit.

UNIT FOUR - BOOKS AND THE BILL OF RIGHTS: A WHOLE LANGUAGE APPROACH TO LAW AND LITERATURE

SOURCE:

Written for the University of Puget Sound Institute for Citizen Education in the Law by Tarry L. Lindquist. Two librarians from Bellevue Public Schools, Vicki Merrill and Doris Cosley, suggested many of these titles. Others were gleaned by Barbara Elleman in her December, 1990 **Book Links** article, "Discovering the Bill of Rights Through Children's Fiction," and by Arlene F. Gallagher in various publications, including Living Together Under the Law.

USE OF OUTSIDE RESOURCE PERSON:

While inviting a librarian in to give book talks can be enriching, the activities featured in this unit are very student centered. Perhaps having older students give book talks for younger ones would be possible. Certainly, invitations to lawyers, law students and judges to speak to the students on the Bill of Rights and the concepts of authority, justice, responsibility, and privacy would enhance the students' understanding of how various amendments and judicial concepts relate to the stories read.

CLASS PERIODS: 1 to 15, depending on the number of lessons used

OVERALL OUTCOMES:

Teachers will discover that law-related education integrates easily into a whole language approach to teaching. For example, the Bill of Rights provides a springboard to all kinds of concepts relating to citizenship. Included in this unit are eleven whole language techniques that help focus the students on amendments from the Bill of Rights which relate to the stories they are reading. These lessons are not in sequential order. Teachers should select the ones that fit the students, the time, and the stories being read.

It is hoped that teachers who are comfortable with whole language will incorporate additional law-related education into their repertoire. Those new to this teaching approach are encouraged to give it a try through the lessons provided.

Whole Language Outcomes:

1. The students will identify amendments that relate to the stories they read.

2. The students will teach younger students the meaning of amendments through stories.

3. The students will chronicle the sequence of a story.
4. The students will express character's feelings in writing.
5. The students will write friendly/business letters using correct format.
6. The students will dramatize parts of a novel.
7. The students will work cooperatively.
8. The students will identify four elements in a story.
9. The students will identify six elements in a story.
10. The students will illustrate the impact of an amendment on the main character of a story.
11. The students will retell stories in text and drawings.
12. The students will create new endings for novels.
13. The students will write plays based on stories read.
14. The students will produce reader's theater from student written plays.
15. The students will research and organize speeches.
16. The students will give persuasive speeches.
17. The students will analyze the relationship of amendments to stories read.
18. The students will read novels which relate to the amendments in the Bill of Rights.

AFTER DINNER CONVERSATIONS

OBJECTIVES

1. The students will demonstrate they understand the novel by acting in the roles of characters having a conversation after an imaginary dinner.

2. The students will identify the amendment which relates to the novel.

3. The students will work in small, cooperative groups.

MATERIALS:

*Copies of the Bill of Rights for each group.

PROCEDURES:

After students have finished reading the book:

1. Place students in small, cooperative work groups based on the number of characters in the novel. Give each group a copy of the Bill of Rights. Ask them to identify which amendment(s) relate to the novel.

2. Tell the students that they are to each take the role of a character and pretend that they have all just had dinner together. Now is the time for relaxed, and perhaps, reflective conversation about events that have occurred in the story. While the conversation will be mostly extemporaneous, the students should plan major points to be covered and practice the conversation enough times to ensure that every character makes a significant contribution. Dressing as the characters may be desirable.

3. Provide time for class for planning and rehearsal. (Optional strategy: Tell the students to video tape their conversation and play the tape for the class. Many students have access to video cameras, public libraries loan them out, and many schools have them available if a teacher will supervise.)

4. Share with the students the following evaluation criteria:

UPSICEL Unit Four, Lesson 1
After Dinner Conversations

GROUP MEMBERS:	1	2	3	4
EASY TO HEAR				
KEPT IN CHARACTER				
ALL MEMBERS CONTRIBUTED				
CONVERSATION WAS APPROPRIATE AND ON TASK				
DISCUSSION INCLUDED THE RELATED AMENDMENT				
FIT TONE AND OUTCOME OF THE STORY				
GAVE EVIDENCE OF THOUGHT AND PLANNING				

STORY LADDERS

OBJECTIVES:

1. The students will be able to retell the novel in four segments.
2. The students will be able to identify how an amendment relates to the novel.
3. The students will create different endings to the novel.

MATERIALS:

*12" x 18" white construction paper for every student
*3" x 12" panels of white construction paper for each student
*Marking pens or colored pencils
*Copies of the Bill of Rights

PROCEDURES:

After the students have finished reading the book:

1. Fold a piece of 12" X 18" construction paper into equal rectangular panels (3" x 12").

2. Using a straight edge, draw a black line with a felt tip marker between each panel on the fold.

3. Instruct the students to retell the story through pictures and words in the four descending panels.

4. On the back, tell the students to identify the amendment being used or abused.

5. Give the students a single panel, 3" x 12", and ask them to create a different ending to the story. Attach this new ending to the story ladder with cellophane tape at the left hand side of the last panel. Fold it back so it doesn't show.

6. Display the story ladders with the new endings hidden. Ask each student to "walk" the class down his/her ladder and then reveal the new ending.

7. Discuss the amendment and its significance to the story. Do any of the new endings to change the power or impact of the amendment in relation to the story and its characters?

ONE PAGE PLAYS

OBJECTIVES:

1. The students will write a one page play involving no more than three characters from the novel.

2. The students will be able to demonstrate their understanding of amendments from the Bill of Rights by using one in the play.

3. The students will produce the plays using readers' theater.

MATERIALS:

*Lined notebook paper
*Copies of the Bill of Rights

PROCEDURES:

After the students have finished reading the novel:

1. Tell the students they are going to have one period to write a one page play. The rules are:

NO LONGER THAN BOTH SIDES OF ONE PIECE OF PAPER.

TWO TO THREE CHARACTERS FROM THE NOVEL.

WRITTEN IN BLACK FELT TIP PEN, LEGIBLY.

THE PROBLEM OR SOLUTION MUST FEATURE AN AMENDMENT FROM THE BILL OF RIGHTS.

AFTER THE PLAYS HAVE BEEN WRITTEN AND TURNED IN, THE TEACHER SHOULD MAKE THREE COPIES OF EACH PLAY.

2. Randomly pass out the student's scripts, stopping when everyone in the class has a part. Instruct the students to read silently the play they've been given, then to begin rehearsal for a reader's theater presentation with the others in their play. Give about 10-15 minutes. (Authors should not act in their own plays.)

3. One group at a time, call the students up to present their play. When all the plays in that round have been presented, start another round. Keep repeating the process until all the plays have been presented.

4. Discuss the strengths and weaknesses of the plays. Comment on the appropriateness and accuracy of the use of the amendments.

5. Ask the students to write a critique of their own play, stating:

A. What they liked.
B. What they would change.
C. What they learned about the amendments.

SPEECHES

OBJECTIVES:

1. The students will research the amendment related to the novel and organize for a speech.
2. The students will develop increased self-confidence and poise.
3. The students will demonstrate an understanding of the amendment featured by giving a speech that uses examples from the novel to validate the need for that amendment.

MATERIALS:

*Reference books on the amendments (See Bibliography)
*Copies of the Bill of Rights

PROCEDURES:

After the students have finished reading the novel:

1. Tell the students that they are going to prepare a 2-minute speech to give in class. They may either pretend to be any character in the novel or simply be themselves. The purpose of the speech is to convince the audience that the amendment related to the novel is essential to the American way of life. Determine if the students may use prompt cards or notes.

2. Brainstorm with the class examples from the novel that could be used to build a convincing argument as to the necessity for the amendment. Give the students time to work in class. Set the day the assignment is due now so the students have ample time to prepare.

3. Share with the students the following evaluative criteria:

NAME OF STUDENT	1	2	3	4
PROJECTED VOICE EFFECTIVELY				
MADE EYE CONTACT				
BUILT A CONVINCING ARGUMENT				
CHOSE EFFECTIVE EXAMPLES FROM THE NOVEL				
DEMONSTRATED COMPREHENSION OF THE AMENDMENT				
DEMONSTRATED THOUGHTFUL AND CAREFUL PLANNING				

RELATIONSHIP WHEELS

OBJECTIVES:

1. The students will be able to identify which amendment relates to the novel.

2. The students will be able to analyze the amendment's relationship to the elements of the story.

MATERIALS:

*Xerox copies of two labeled circles for each student
*Colored markers or pencils
*Copies of the Bill of Rights

PROCEDURES:

After the students have finished reading the book:

1. Give each student a large paper circle with four "pieces of pie." Label the pieces as follows:

Setting and Time
Characters
Problem
Resolution

2. Give your students a much smaller paper circle labeled: Amendment.

3. Starting with the smaller circle, ask the students to identify the amendment featured in the novel and to explain the amendment in words and/or drawings. When they are done, give the students one brad (paper fastener) each and ask them to attach the center of the small circle to the center of the larger circle.

4. Tell the students they are to show the relationship of the amendment to the four elements of the story using words and/or drawings.

5. When the students are finished, instruct them to form small groups and to share their Relationship Wheels.

6. Ask for observations and comments at the end of the small group sharing.

PICTURE BOOKS

OBJECTIVES:

1. The students will be able to identify at least one amendment related to the story.
2. Using the story, the student will design a way to teach the meaning of the amendment to a younger student.

MATERIALS:

*Picture books related to amendments from our Bill of Rights (see bibliography)
*Assorted art supplies
*Arrange for your class to come to younger class to teach amendments from the Bill of Rights (at least 2 years difference is recommended)
*Copies of the Bill of Rights

PROCEDURES:

1. Provide the students with picture books or give them a list of appropriate books to consider and have them each bring one to class.

2. Spend a part of the class period quietly reading and sharing the books.

3. Ask the students to identify an amendment from the Bill of Rights that is related to the story and tell why.

4. Tell the students you have arranged for them to share their book with younger students so that they can begin to learn about the Bill of Rights. Using the story, their job is to design a way to teach younger students one of these relatively sophisticated concepts. Remind the students that most of us learn best when we do something as well as hear and see something. What can they devise that their younger student will be able to do?

> The teacher should provide some information as to the growth and development of the age of child the class will cross-age teach. This will help your students plan appropriate activities.

5. Give the students time in class to work on their projects.

6. Have the students share their projects in class before doing the cross-age teaching. Encourage the class to make positive suggestions and comments.

7. Debrief the activity upon return to the classroom. It's important to give your students time to comment on and reflect upon the interactive experience.

JOURNALS

OBJECTIVES:

1. The students will document, in sequence, what is happening in the novel.
2. The students will identify how the novel relates to an amendment.
3. The students will express character's feelings in regard to the amendment.

MATERIALS:

*Paper appropriate for journal writing
*Binding materials (optional)
*Samples of journals (optional)
*Copies of the Bill of Rights

PROCEDURES:

As the students are reading the novel:

1. Share samples of journals with the students if you choose.

2. Tell the students they are going to keep a journal while they read the novel as if they were the main character. Set the number of entries and minimum length expected. Decide if you will accept drawings. Determine how many entries must focus on the amendment and its relationship to the story. Tell the students if they must bind their journal.

3. Give some class time each day for journal writing.

4. When completed, ask each student to read his/her favorite entry to the class.

LETTERS

OBJECTIVES:

1. By writing letters, the student will demonstrate they comprehend how the novel relates to an amendment and the characters in the story.

2. The students will choose the correct format (business, friendly) for the letters they write.

MATERIALS:

*Writing materials (Some teachers prefer to have their students create or personalize the stationery they use. Others suggest the students make the stationery match the time period of the story, i.e. quill pen and tea stained paper to simulate the letters written on parchment in colonial days or a clever computer designed letterhead to fit today's business world.)

PROCEDURES:

Any time during the reading of the novel or when completed:

1. Choose from any of the suggested applications which follow or create your own:

The students could write as a character in the novel:

to a pen pal explaining the situation.

to a lawyer seeking advice.

to a relative.

about another character to someone not in the story.

to another character in the story, sharing feelings.

to the editor of the local paper.

to a government official.

2. Ask the students to read their letter(s) aloud in class.

Some teachers like to have 3 or 4 sequential letters written as the students progress through the story. These letters should reveal increasingly more comprehension as the novel unfolds and more personalization as the student identifies with the characters.

TELEPHONE CALLS

OBJECTIVES:

1. The students will dramatize parts of the novel.
2. The students will personalize the novel by talking, in character, about the problem in the story and the related amendment.
3. The students will work cooperatively.

MATERIALS:

*2 non-working phone receivers (optional)
*Copies of the Bill of Rights

PROCEDURES:

After the students have finished reading the novel:

1. Match the students into pairs for cooperative work.

2. Explain that the students will have one class period to develop a dialogue between two characters in the story. This dialogue will take place over the telephone. The dialogue must last at least 3 minutes and deal, in part, with the amendment featured and the problem of the story.

3. Share with the students the following evaluation criteria.

PARTNERS	1	2	3	4
Easy to hear				
Kept in character				
Met the time minimum				
Interesting and appropriate conversation				
Tied in the amendment in a natural way				
Fit the tone and outcome of the novel				

SOME TEACHERS MIGHT WANT TO RECORD OR VIDEO TAPE THIS ACTIVITY.

CARTOON QUARTILES

OBJECTIVES:

1. The students will be able to identify four important elements of a story.

2. The students will project what a character would say/feel about the amendment related to the story.

MATERIALS:

*Standard ditto paper
*Colored markers and/or black felt tip pens

PROCEDURES:

After the students have finished reading the book:

1. Give each student a piece of paper. Tell them to fold the paper in half. Then tell them to fold the paper in half again to make a mini four page book.

2. Instruct them to draw cartoons of a character from the story having trouble with the amendment related to the novel. The four pages should depict the character, the setting, the problem, and the solution in cartoon form.

3. Tell the students to open up their "book" to a full sheet of paper on the inside and draw a large cartoon of their featured character completing this statement, "When it comes to the Amendment, I resolve to . . . ."

4. Organize the students into small groups. Ask them to share their books with the group. Encourage positive comments. When that group has shared. Ask the students to jigsaw into another small group of the same size with students they haven't shared with yet. Continue sharing and moving until all the students have read and enjoyed each other's books.

STORYBOARDS WITH A ZOOM LENS

OBJECTIVES:

1. The students will be able to identify the six elements in a story.

2. The students will identify the amendment related to the novel and its impact on the main character.

MATERIALS:

*12" x 18" white construction paper for each student
*9" x 12" white construction paper for each student
*Marking pens or colored pencils

PROCEDURES:

After the students have finished reading the book:

1. Fold a piece of 12" X 18" white construction paper into eight equal boxes.

2. Using a straight edge, outline each box with a black felt tip marker.

3. Set up the criteria for each box:

1st-Title, Rewritten by
2nd-Main character
3rd-Setting, Time
4th-Situation or Conditions before problem
5th-Antagonist/Problem
6th-Conflict
7th-Resolution
8th-Denouement (wrapping up the loose ends) or The End

4. Encourage students to use colored markers. Insist students use some text and some drawing in each box.

5. Using a half piece of white construction paper, 9" X 12", instruct the students to pretend they have a zoom lens and they are going to focus on the amendment related to the novel. They should draw the main character acting or reflecting on the use or abuse of the amendment within the context of the story.

For example, Kate, in Maudie and Me and the Dirty Book, could be shown at the school board's meeting with the community, standing up saying, "I'm Kate Harris. I'm the one who read the book to the kids at Concord. I'm not ashamed of it. I think everybody in this room should read the whole thing before they criticize it. ...And it's not dirty. It's educational!"

At the bottom of this depiction, the student should identify the amendment featured.

6. Display student work. Ask each student to present his/her "zoom lens" piece to the class, explaining their amendment and action/reflection.

DRAMATIC PRESENTATION

OBJECTIVES:

1. The students will memorize parts of the United States Constitution.
2. The students will demonstrate they understand the Constitution through discussion and presentation.
3. The students will present the Constitution of the United States in dramatic form.

MATERIALS:

*Scripts of the Constitution

PROCEDURES:

1. Have the students conduct a quick, informal survey to find out when it was that people last heard or read the Constitution of the United States and report back.

2. Discuss how easy it is to go for a long time without familiarizing ourselves or reacquainting ourselves with this vital and basic document.

3. Hand out scripts. Tell the students they are going to read and discuss the Constitution today. Begin by asking for volunteers and read the parts.

4. Break into small groups. Give each group the responsibility of explaining to the rest of the students what their page is about.

5. Listen and discuss each group's page presentation. Inform the students that they are going to present this document dramatically for a special event (school assembly, open house, parents' night, etc.) Assign role responsibilities. Set a deadline for line memorization.

6. Practice often. Work on effective oral presentation skills. "Buddy" students up to help with memorization.

7. Practice on stage, with movement, when the students are pretty solid on their lines.

8. Decide what to wear (red, white, and blue is effective.) Have a dress rehearsal.

9. Enjoy the performance.

UPSICEL Unit Four, Lesson 12
Dramatic Presentation

THE CONSTITUTIONAL CONNECTION

A DRAMATIC PRESENTATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA FOR THE INTERMEDIATE GRADES

BY TARRY L. LINDQUIST & JULIE GUSTAVSON

(MUSIC INTRO, DARK STAGE, SLOWLY FILL WITH LIGHT, ONE STUDENT BEGINS SPEAKING AND BUILDS TO ALL AS MUSIC FADES.)

ALL We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

(MUSIC RISES AGAIN AND THEN FADES TO SILENCE.)

LINE 1 The colony of America declared its independence from Britain in the year 1776. Some might say that was the easy part. Now this young country had to deal with problems at hand. We began with the Articles of Confederation, written in 1777. They didn't work:

LINE 2. Each state is acting like a separate country!

LINE 3 You're right! Each one is printing money, and most of it is worthless!

LINE 4 Trade between the states is nearly impossible! Why, Delaware is taxing Maryland when farmers bring apples to market!

LINE 5 No one will pay for the debts built up during the Revolutionary War!

LINE 6 I hear that Captain Daniel Shay has led a rebellion against the state government of Massachusetts!

LINE 7 Such confusion made the need for a stronger central government quite obvious and so it was proposed that representatives from all the states would meet in Philadelphia on May 14, 1787 to revise the Articles of Confederation. But getting started proved difficult. In fact, so few showed up that the opening had to be delayed two weeks and Rhode Island never did send anyone.

LINE 8 Finally, on May twenty-fifth, fifty-five men met to revise the Articles. Instead, they scrapped the Articles and wrote the Constitution of the United States of America. Never before had a country deliberately set forth to write the law of the land in one document. And not before or since has such a plan lasted 200 years! In the 200 years since the Constitution was written our country has grown considerably in size and population, but the original model for our government has been flexible enough to adjust to major changes. And that's why the U.S. Constitution is a landmark document, one that many countries have looked to when forming their own governments.

LINE 9 Most likely, you have never heard the content of our Constitution. Since it insures our freedom and outlines our responsibilities, we'd like to share it with you now,. . .

ALL The Constitution of the United States of America.

Line 10 The framers of the Constitution insisted on a balance of power so our government is divided into three branches. The first is described in Article I. It is the Legislative Branch.

LINE 11 Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

LINE 12 Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states.

LINE 13 No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

LINE 14 Parts of this section have undergone change since those hot August days in 1787 but these three provisions are maintained:

1) the number of representatives given to each state shall be based on its population,
2) Congress must see that the people of the United States are counted every ten years, and
3) each state gets at least one representative.

LINE 15 The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

LINE 16 The Senate is the other limb on the legislative branch. Like the Liberty Tree, the House of Representatives and Senate rise from the will of the people into a balanced whole.

LINE 17 Section 3. The Senate of the United States shall be composed of two senators from each state, elected for six years; and each senator shall have one vote.

LINE 18 This clause sets up a system of staggered elections to the Senate. All senators now have six year terms but the terms end at different times.

LINE 19 No person shall be a senator who shall not have attained to the age of 30 years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

LINE 20 The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

LINE 21 The Senate shall choose their other officers, and also a president "pro tempore," in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

LINE 22 The Senate shall have the sole power to try all impeachments.

LINE 23 Section 5 describes the organization of Congress, that is how these two houses act with each other and through this interaction, how Americans are guaranteed fair play by law.

LINE 24 Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

LINE 25 Each house shall keep a journal of its proceedings, and from time to time shall publish the same, excepting such parts as may in their judgment require secrecy;

LINE 26 And the yes and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered in the journal.

LINE 27 Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.

LINE 28 Members of Congress are not allowed to create jobs nor raise the salaries of Jobs which they might later hold.

LINE 29 Section 7. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States

LINE 30 If he approves he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated

LINE 31 Who shall enter the objections at large on their journal, and proceed to reconsider it.

LINE 32 But a bill sent to the President during the last ten days of Congress cannot become a law unless it is signed.

LINE 33 If a bill the President dislikes reaches the President near the end of a session, the bill may be held unsigned. When Congress adjourns, the bill is killed.

LINE 34 This practice is known as the "pocket veto." It is like the President put the bill into a coat pocket and forgot it, just like a shopping list!

LINE 35 Section 8 describes the powers granted to Congress. Since 1787 and through today, these powers have affected the daily lives of Americans.

LINE 36 The Congress shall have power to lay and collect taxes

LINE 37 To pay debts and provide for the common defense and general welfare of the United States

LINE 38 To borrow money

LINE 39 To regulate commerce with foreign nations, between the states and with the Indian tribes

LINE 40 To coin money and fix the standards of weights and measures

LINE 41 To establish post offices

LINE 42 To promote the progress of science and useful arts through copyright laws.

LINE 43 To raise and support armies

LINE 44 To provide and maintain a navy

LINE 45 To declare war

LINE 46 And to make all laws which shall be necessary and proper.

LINE 47 Some powers are forbidden to Congress and these are stated in Section 9.

LINE 48 The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

LINE 49 His (or her) section refers to the slave trade and the whole Constitutional Convention nearly collapsed over this issue. Dealers in the North as well as the south, wanted to make sure that no one would be stopped from bringing in slaves. A compromise to save the Constitution was necessary. For twenty-three years the slave trade would be allowed. In 1808, the importing of slaves was banned.

Line 50 Compromise was an important part of writing the Constitution. In addition to the one just mentioned, there was the Connecticut Compromise which guaranteed the membership of the House of Representatives and the Senate.

LINE 51 And a third compromise settled another conflict over slavery. The men at the convention were divided over how to count slaves in order to determine how many Representatives a state could have. Slaves were not considered citizens, and so the convention agreed that each slave would be counted as three-fifths of a person.

LINE 52 In spite of these disagreements, the Constitutional Convention was a miracle. Fifty-five men cooperated and compromised. Each man was representing the special interests of his state. Cooperation is one of the cornerstones of our Constitution. Compromise is another.

LINE 53 Another cornerstone is Balance. The balance of power. The balance of three branches of government. The first being the Legislative Branch. The second, the Executive Branch.

(STUDENTS SING)

LINE 54 ARTICLE II, The Executive Branch speaks to us about the duties, power and responsibilities of the President.

LINE 55 Section 1. The executive power shall be vested in the President of the United States of America.

LINE 56 No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President;

LINE 57 Neither shall any person eligible to that office who shall not have attained to the age of thirty-five years and been fourteen years a resident within the United States.

LINE 58 Before entering on the execution of office, the person shall take the following oath or affirmation:

LINE 59 I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

LINE 60 Section 2. The powers of the President include the following:

LINE 61 The President shall be commander in chief of the Army and Navy

LINE 62 The President shall have the power to grant reprieves and pardons

LINE 63 The President shall have the power, by and with the advice of the Senate, to make treaties.

LINE 64 The President shall appoint ambassadors and judges of the Supreme Court

LINE 65 The President shall from time to time give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient,

LINE 66 The President shall take care that the laws be faithfully executed.

LINE 67 The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

(STUDENTS SING)

LINE 68 ARTICLE III outlines the third part of the balance of powers. To the Legislative and Executive branches, we now add the Judicial Branch which deals with justice and the courts.

LINE 69 Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

LINE 70 The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

LINE 71 The Supreme Court is the highest court in the nation.

LINE 72 Section 2. The trial of all crimes, except in cases of impeachment, shall be by jury

LINE 73 And such trial shall be held in the state where the said crimes shall have been committed.

LINE 74 ARTICLE IV, Relations between the States.

LINE 75 Section 3. New states may be admitted by the Congress to this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

LINE 74 Under this section, Washington became a state in 1889, and Alaska and Hawaii became states in this century.

LINE 76 Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application, against domestic violence.

LINE 77 A republican government is one in which people elect representatives to govern them. The national government is required to make sure every state has this representative form of government.

LINE 78 Article V. The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution.

Line 79 Amendments are additions to the original document. The first ten amendments were known as the Bill of Rights. They were adopted because some states approved the Constitution with directives that a Bill of Rights be added. These amendments protect individuals from unjust acts of government. They include freedom of religion, speech, the press, and the right to a fair trial.

LINE 80 Article VII closes the Constitution with these lines about how the government would come into being:

> (choral) The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

LINE 81 And so on September 17, 1787, nearly 200 years ago, thirty-nine of the fifty-five men who first came together, signed their names with William Jackson, Secretary of the Convention witnessing their signatures. That's how the Constitution ends but it began with the people, stays with the people, and we---all of us---are the people! Join with us now as we repeat the preamble to the Constitution of the United States of America.

Audience and students repeat preamble.

Play opening of "Fanfare for the Common Man."

Abridged from the Constitution of the United States of America

WRITTEN UNDER A GRANT FOR THE MERCER ISLAND SCHOOLS FOUNDATION

BOOKS AND THE BILL OF RIGHTS, A BIBLIOGRAPHY

FIRST AMENDMENT-FREEDOM OF RELIGION, SPEECH, PRESS AND ASSEMBLY

Avi. THE FIGHTING GROUND, 1984, Harper Collins/Lippincott (hardback and paper)

In 1778, a thirteen year old boy joins a small group of neighbors who intend to head off British soldiers coming to their countryside. Captured by the Hessians, Jonathan finds war not as glorious as he imagined.

Cohen, Miriam. Laura Leonora's First Amendment, 1990, Dutton/Lodestar.

Laura courageously defies her parents to associate with a student who has AIDS after a controversial court ruling mandates he be admitted to her junior high.

Danziger, Paula. Can You Sue Your Parents for Malpractice?, 1979, Delacourte.

Laura Allen and her classmates create a classroom law-related newspaper after taking a course in "Law for Children and Young People." She and her classmates learn just what rights they do have.

Hentoff, Nat. The Day They Came to Arrest the Book, 1983, Dell. (hardback and paper)

A small group of students and parents decide The Adventures of Huckleberry Finn is racist, sexist, and immoral, and demand the book be removed from school reading lists and the library. It doesn't take long for the town to choose up sides, and Barney Roth, editor of the school paper, knows he should print his article on censorship, but he may be too late.

Hurwitz, Johanna. Once I Was a Plum Tree, 1980, Morrow.

Ten year old Gerry has two best friends. She is Jewish and they are both Catholic. Circumstances occur which confuse her about and make her aware of religious prejudices.

Langton, Jane. The Fragile Flag, 1984, Harper/Collins. (hardback and paper)

The President is promoting a Peace Missile. George Hill, a nine year old boy, decides to protest by walking to Washington, D.C. from Waldon Pond.

Lasky, Kathryn. Prank, 1984, Macmillan (hard), Dell (paper).

Sixteen year old Birdie Flynn gains a greater understanding of religious prejudice after her brother is accused of defacing a synagogue.

Miles, Betty. Maudie and Me and the Dirty Book, 1980, Knopf (hard), Knopf/Bullseye (paper) Avon/Camelot (paper)

Kate innocently reads a book to first graders that describes the birth of a puppy. Suddenly she is in the middle of a censorship battles that involves the whole town.

O'Dell, Scott. Sarah Bishop, 1980, Scholastic. (hard and paper)

The Revolutionary War changed Sarah's life forever. A fugitive from the British Army, she lives outside the law. This story is relates to the right to privacy, trials, and freedom of speech. Both boys and girls enjoy it.

Oneal, Zibby. A Long Way to Go, 1990, Viking.

Lila's grandmother strongly advocates women's right to vote. Lila convinces her father to let her march with the suffragettes. Set in 1917, the story highlights the first amendment.

Rappoport, Doreen. Trouble at the Mines, 1987, HarperCollins.

The 1898 coal miners' strike is fictionalized in this account of Mother Jones' supportive march of the workers and their subsequent victory.

Reiss, Johanna. The Upstairs Room, 1972, Crowell.

Similar to The Diary of Anne Frank, this book tells the story of Annie, a young Jewish girl, who flees from Germany to Holland during WWII. Suitable for younger or less able readers.

Sebestyen, Ouida. On Fire, 1985, Little, Brown/Joy Street Books (hard), Bantam/Starfire (paper)

Questioning the use of violent tactics to achieve a good cause, this novel explores the complexities of union/management relations at a mine where scabs have been employed to break a strike.

Speare, Elizabeth. The Bronze Bow, 1961, Houghton Mifflin.

In this Newbery award-winning book, a young blacksmith parents are murdered by invading Roman armies in Israel. Daniel Bar Jamin becomes a religious zealot. This story provides many opportunities to explore religious freedom.

Turner, Ann. A Hunter Comes Home, 1980, Crown.

This exciting book about a contrast of cultures features Jonas, an Eskimo teenager. As he tries to figure out where he fits in, he becomes frustrated and angry because pleasing others means not being happy within himself. Coming to terms with his own values makes this a remarkable book.

Van Woerkom, Dorothy. Pearl in the Egg, 1980, T.Y. Crowell.

The author researched this story carefully, basing it on the facts of two real-life female minstrels in King Edward the First's court. This story can be read aloud to primary students to study first amendment issues.

Wiseman, David. Thimbles, 1982, Houghton.

Manchester mill workers seek the right to vote in 1819. A twentieth century English girl finds herself a part of the tragic demonstration.

SECOND AMENDMENT-THE RIGHT TO BEAR ARMS

Keith, Harold. Rifles for Watie, 1957, HarperCollins/Crowell (hard), HarperCollins/Trophy (paper)

This Newbery award-winner centers on Jeff Bussey, a youth who enlists in Union Army and later, sees the other side, as he pretends to join a Confederate general's staff to avoid being labeled a spy.

Snyder, Zilpha. A Fabulous Creature, 1981, Atheneum (hard), 1988 Dell (paper).

James Fielding is a sixteen year old with lots on his mind, mainly girls. Forced to join his parents on a summer sojourn in the Sierra's, Fielding finds himself hiding a secret about a marvelous stag from Diane Jarrett's hunt-happy family.

THIRD AMENDMENT-LODGING TROOPS

Cavanna, Betty. Ruffles and Drums, Morrow.

Sarah and her mother must run the farm alone after the men leave for war. An injured British soldier is forced upon them and they nurse him back to health.

Climo, Shirley. A Month of Seven Days, 1987, HarperCollins/Crowell (hard), Troll (paper)

Twelve year old Zoe makes some discoveries about herself and life during the longest week of her life. Yankee troops take over her Georgia home in 1864 while her father is away fighting for the South.

Finlayson, Ann. Rebecca's War.

In 1777, Philadelphia is an occupied city. Rebecca, taking care of her younger brother and sister, hides military secrets from the British soldiers quartered in her home.

FOURTH AMENDMENT-SEARCH AND SEIZURE, PRIVACY

Conford, Ellen. We Interrupt This Semester For an Important Bulletin, 1979, Little, Brown.

Carrie and Chip want the school newspaper to have some zip this year so they decide to do some investigative reporting. They learn the hard way about invasion of privacy and hasty conclusions.

Brancato, Robin. Sweet Bells Jangled Out of Tune, 1983. Scholastic/Point (paper).

For older readers, this book is about the right to privacy when a young girl wants to help an aging grandmother who doesn't want either her help or her attention.

Fitzhugh, Louise. Harriet the Spy, 1964, Harper & Row.

Harriet fills a secret notebook with incidents and conversations of friends and family, unbeknownst to them. When the contents of the notebook are revealed, Harriet must face their anger.

Garrigue, Sheila. The Eternal Spring of Mr. Ito, 1985, Bradbury.

Sara has been evacuated from Britain to Vancouver, Canada. Her friend, Mr. Ito, and other Japanese Canadians are scheduled for detention camps and she is powerless to stop this action.

Gauch, Patricia. This Time, Tempe Wick?, 1974, Putnam.

Set in 1780, Revolutionary soldiers camp on Tempe's family farm in New Jersey. She befriends them until they steal her horse. They'd better watch out!

Gauch, Patricia. Thunder at Gettysburg, 1975, Putnam.

Tilly begins watching the Battle of Gettysburg through her attic window never dreaming that she'll soon be a part of the terrible and seemingly on-going battle.

Greene, Bette. Summer of My German Soldier, 1973. Dial (hard), Bantam (paper).

A twelve year old girl in Arkansas hides an escaped prisoner of war. A series of shattering experiences follow.

Hamanacha, Sheila. The Journey, 1990, Watts/Orchard/Richard Jackson.

The history of Japanese Americans is accurately recorded in the author's artwork and words.

Uchida, Yoshida. Journey to Topaz, rev. ed. 1985, Creative Arts. (hard and paper)

A reissue of the 1971 book, this story about Yuki and her family's treatment after Pearl Harbor and a sequel, Journey Home, dealing with their return after internment is a must for all young readers. Wonderful as a read aloud or read alone.

FIFTH AMENDMENT-RIGHTS OF THE ACCUSED
SIXTH AMENDMENT-CRIMINAL PROCEEDINGS
SEVENTH AMENDMENT-JURY TRIAL
EIGHTH AMENDMENT-BAIL AND PUNISHMENT

Avi. True Confessions of Charlotte Doyle, 1990, Watts/Orchard/Richard Jackson.

A wicked sea captain commands the "Seahawk" and Charlotte will not receive a fair trial on board the vessel to America.

Boutis, Victoria. Looking Out, 1988, Four Winds.

Twelve year old Ellen's parents are communists and they are dedicated to the Rosenbergs. She must struggle with her loyalty to her parents, their secrecy and their devotion to a cause.

Burch, Robert. Queenie Peavy, 1966, Viking.

Queenie's father is in jail and she acts out angrily. This only confirms what the town suspects about her. Queenie overcomes her problems with the help of a kind judge and principal. This book portrays authority in a positive light.

Danziger, Paula. Can You Sue Your Parents for Malpractice?

See First Amendment section

Ferguson, Alane. Cricket and the Crackerbox Kid, 1990, Bradbury.

A teacher steps in to help two children resolve their claim to the same much loved dog by setting up a jury of their peers. The classroom trial features the two fifth graders making their own case.

Hentoff, Nat. Does This School Have Capital Punishment?, 1981, Delacourte.

Sam has an absorbing new interest, jazz. He interviews Major Kelley, a renowned black trumpeter. Sam is accused of possessing marijuana by a teacher at his prestigious private school. Only the truth can keep Sam from being expelled.

Holland, Isabelle. The Empty House, 1983, Harper/Lippincott.

Betsy and her brother do clever detective work to free their father from a false tax fraud conviction.

Key, Alexander. The Forgotten Door, 1965, Scholastic. (paper)

A wonderful story that deals with prejudices and differences. Perfect for most fifth grade readers.

Killien, Christi. Artie's Brief: The Whole Truth and Nothing But, 1989, Houghton (hard), Avon/Camelot (paper).

Artie finds that righting a wrong the way that lawyers do is considerably more complicated than he anticipated.

Peck, Robert Newton. Justice Lion, 1980, Little Brown.

A deep friendship develops between the Bolts and the Lions in Vermont during Prohibition years. While living in the same small town, they live very differently. Jessie Bolt is appointed district attorney. Justice Lion is a moonshiner who is arrested by federal agents. Jessie must prosecute. Chapters 15-23 are excellent references for trial language and procedure.

Speare, Elizabeth. Witch of Blackbird Pond, 1958, Houghton (hard) Dell (paper).

In this Newbery award-winner, the Salem witch trials are featured in a way that students of all ages can learn from and enjoy.

Taylor, Mildred. The Gold Cadillac, 1987, Dial.

An African American man and his family are detained by police as they head South in their beautiful gold Cadillac.

FOURTEENTH AMENDMENT-EQUAL PROTECTION, DUE PROCESS

Wilkinson, Brenda. Not Separate, Not Equal, 1987, HarperCollins.

It's 1965 and a Georgia town is faced with school integration. Malene Freeman finds herself caught in the anger from all sides.

Walter, Mildred Pitts. Girl on the Outside.

Promoting desegregation is the chosen task of a white girl and an African American girl. Based on the 1957 incident in Little Rock, this story provides a bittersweet perspective.

OTHER

Cormier, Robert. I Am the Cheese, 1977, Pantheon.

Connected to the Witness Protection Act, this story is about a boy responding to events not of his own making. It is a powerful story and teachers should read it before assigning it.

BACKGROUND SOURCES FOR TEACHERS AND STUDENTS

The Bill of Rights and You, 1990. West Publishing Company, 50 W. Kellogg Blvd., P. O. Box 64526, St. Paul, MN 55164- 1003, $5.95

Colman, Warren. The Bill of Rights, 1987, Children's Press. (hard and paper)

Dolan, Edward F. The Police in American Society, 1988, Watts.

Fink, Sam. The Constitution of the United States, 1985, Random.

Evans, J. Edward. Freedom of Speech, 1990, Lerner.

Goode, Stephen. The Controversial Court: Supreme Court Influences on American Life, 1983, Messner.

Hawkes, Nigel. Gun Control, 1987, Watts.

Hentoff, Nat

American Heroes: In and Out of School, 1987, Delacourte

The First Freedom: The Tumultuous History of Free Speech in America, 1988, Delacourte.

Law, Youth, and Citizenship Program. Living Together Under the Law: An Elementary Education Law Guide, 1986, New York State Bar Association

Larson, Susan Booth. Teaching Citizenship Through Children's Literature Oregon Law-Related Education Project, 220 SE 102nd Avenue, Portland, Oregon 97216 (503) 255-1841

Lindop, Edmund. The Bill of Rights and Landmark Cases, 1989, Watts.

Lord, Betty Bao. In the Year of the Boar and Jackie Robinson, 1984, Harper.

Meltzer, Milton. The Bill of Rights: How We Got It and What It Means, 1990, HarperCollins.

Oregon Law Related Education Project. Law Through Literature: A K-8 Bibliography on Authority and Power, see Larson annotation

Rogers, Donald J. Banned! Book Censorship in the Schools, 1987, Julian Messner.

SPICE III Classroom Teachers. Applauding Our Constitution, 1989, Center for Research and Development in Law-Related Education, Wake Forest University School of Law

Turner, Glennette Tilley. Take a Walk in Their Shoes, 1989, Cobblehill Books.

Utah Law-Related Education Project. We the People, Teaching the U.S. Constitution Through Literature: An annotated bibliography, 1989, Utah State Office of Education, Salt Lake City, Utah, 84111.

LAW, LITERATURE AND WHOLE LANGUAGE-PICTURE BOOKS

These books can be used to teach legal concepts to younger students, or to capture an idea without reading an entire book.

Bemelmans, Ludwig. Madeline's Rescue.

Bottner, Barbara. Mean Maxine.

Brown, Marcia. Stone Soup.

Cooney, Barbara. Miss Rumphius.

Dahl, Roald. The Magic Finger.

Davis, Douglas F. The Lion's Tail.

Demi. The Empty Pot.

dePaola, Tomie. The Hunter and the Animals.
Strega Nona.
How Many Days to America?
Oliver Button is a Sissy.

deRegniers, Beatrice. Jack and the Beanstalk.

Eco, Umberto and Eugenio Carmi. The Three Astronauts.

Gaeddert, Lou Ann. Noisy Nancy Norris.

Galdone, Paul. The Little Red Hen.

Golenback, Peter. Teammates.

Hargreaves, Roger. Mr. Nosey.

Hill, Reginald. Evan's Corner.

Hoban, Russell. Bedtime for Frances.

Kellogg, Steven. The Island of the Skog.

Lionni, Leo. Frederick.
Swimmy.

Marshall, James. Goldilocks and the Three Bears.

Mathews, Louise. The Great Take-Away.

Monjo, F. N. The Drinking Gourd.

Morgan, Stephanie. Care Bears-The Witch Down the Street.

Noble, Trinka. *The Day Jimmy's Boa Ate the Wash*.

Peet, Bill. *Big Bad Bruce*.

Peterson. *The Littles*.

Potter, Beatrix. *The Tale of Peter Rabbit*.
The Tale of Benjamin Bunny.

Rey, H.A. *Curious George*.

Say, Allen. *El Chino*.

Sciezka, Jon. *The Story of the Three Little Pigs*.

Stanton, Emily. *The Very Messy Room*.

Steig, William. *Doctor De Soto*.

Seuss. *The 500 Hats of Bartholomew Cubbins*.
"The Zax." *The Sneetches and Other Stories*.
The Cat in the Hat.

Turner, Ann. *Nettie's Trip South*.

Yolen, Jane. *The Minstrel and the Mountain*.

UNITS FIVE - EIGHT

The following four units include lesson materials designed to assist teachers in developing additional lessons for upper elementary and middle school students. The lessons provided were written for more advanced students (grades 9-12). Lessons developed by elementary and middle school teachers who attended UPSICEL's 1991 Bicentennial training will be available from UPSICEL after April 1992.

Units 5-8 include:

> **Unit 5** shows teachers how to use **original documents** to teach about due process and equal protection in wartime. The National Archives - Pacific Northwest Region assisted UPSICEL by developing packets of original documents from Gordon Hirabayashi's challenge to the Japanese internment and curfews during World War II through his vindication in the 1980s. Copies of these some of these documents are provided with the lesson in Unit Five.
>
> **Unit 6** focuses on the History of the Bill of Rights.
>
> **Unit 7** teaches about the First Amendment's right of free speech.
>
> **Unit 8** teaches about the Fifth Amendment's right to be free from self-incrimination. Material provided include the history of the Fifth Amendment, the underlying rationale and present day applications of this right.

UNITED STATES V. HIRABAYASHI
A CASE STUDY USING ORIGINAL DOCUMENTS

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law.

Use of Outside Resource Persons:

Community members who are former internees, or lived through World War II would be excellent resources for this unit. A lawyer or judge could talk about due process and equal protection.

Class Periods: 1-2

Objectives:

1. Students will define "indictment."
2. Students will explain the purpose of a closing argument to a jury in a trial.
3. Students will formulate closing arguments to the jury, using original documents, including proposed jury instructions.
4. Students will analyze and weigh arguments.

Materials

Handouts 1 - 8

Procedures:

1. Pass out Handout 1, and ask students to read the background information about the case. Ask questions to check for understanding:

a. What was the mood of the country in 1942?

b. Why were people afraid?

c. What role did the press play?

d. What did President Roosevelt do?

2. Look at Handout 2, the indictment. Ask for a definition of the word "indictment."

The indictment is the formal written document prepared by the government, and issued by a grand jury, charging the defendant with committing a crime or crimes.

3. Ask students to read through the document, and check for understanding by asking the following questions:

a. What court is the case being tried in?

The U.S. District Court for the Western District of Washington, Northern Division.

b. How many counts, or charges are there? What laws does the indictment say he violated?

There are two counts, which means that he is charged with two crimes. The first is for the violation of Civilian Exclusion Order No. 57. The second is for violation of Public Proclamation No. 3. Ask students to look at these two orders. Explain that the government has the burden to prove these charges beyond a reasonable doubt.

4. Pass out Handout 3, a summary of the testimony at the trial. Ask students, working in groups of 3 to 5, to review the indictment and testimony, and decide:

Did the defendant violate the orders?

Was his refusal to comply justified?

a.. What does the government need to prove to win its case?

Count I: To win its case for violation of the exclusion order, the government must show that Gordon did not report to the Civilian Control Station on May 11, 1942 or May 12, 1942.
Court II: To win its case for violation of the curfew order, the government must prove that he violated the curfew, by staying out between 8:00 p.m. and 6 a.m.

b. What is the defendant's position?

The defendant argues that he is a loyal American citizen, and that his constitutional rights were violated by the issuance of the orders. (Although he does not specifically state which rights, it would be his 5th amendment right to due process.) He states that the orders discriminate against him because he is of Japanese ancestry.

The equal protection clause of the 14th amendment[1] is the amendment used today in discrimination cases (along with many specific laws that prohibit discrimination). However, the 14th amendment, as written, only applied to actions by the states. At the time of Hirabayashi's trial the 14th amendment's "equal protection" clause had not been formally "incorporated" into the 5th amendment, and therefore was not applicable to the federal government. Hirabayashi's lawyer made some of these arguments to the judge anyway.

c. What facts are important to prove each side's position?

The government must prove that the defendant didn't report to the Center, and that he was out past the curfew time.

Hirabayashi must prove that the orders violate the fifth amendment's due process clause. He must show that he was ordered to report and comply with the curfew only because he was of Japanese ancestry, and not because he was disloyal or suspected of espionage or spying.

5. Tell students that they will now make closing arguments to the jury in the Hirabayashi case. Review briefly the steps in a trial and the purpose of a closing argument and jury instructions.

At the beginning of a trial, the attorneys for both sides make opening statements to the jury, then the witnesses testify. At the end, the attorneys make final closing arguments.

The purpose of the closing argument is to review the testimony as given by the witnesses, show what facts support the attorney's side of the case, and convince the jury that his or her side should win.

Before the closing arguments, both sides prepare a version of the jury instructions they would like for the judge to use, present them to the judge, and the judge decides which instructions are appropriate.

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[1] The fourteenth amendment (1868) provides in part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Jury instructions are read by the judge to the jury after the closing arguments by the attorneys for both sides in Federal court.[2] The instructions tell the jury what law they are to apply to the facts in the case.

Note to teacher: At the Hirabayashi trial, the judge actually refused to use any of the Instructions proposed by the Defendant. They are being used here, however, as a method to present what the Defendant's arguments were, and in fact some of these arguments were made to the jury at the trial despite the judge's ruling.[3]

6. Divide the class into two groups. One will represent the government and the other will represent the defendant. Pass out the Proposed Instructions and the summaries of the Instructions, Handout 4, to each side. (The summaries are simplified versions of the Jury Instructions.)

Tell students that, working in groups of 4-5, they are to prepare a closing argument for their side of no more than 5 minutes, using the Proposed Jury Instructions and the summaries for their side, the witnesses' testimony as summarized and any other documents provided. One or two students from each group should present the argument. Allow sufficient time for preparation.

Tell students that the Government always goes first, as it has the burden of proof, which means that since the defendant is assumed innocent until proven guilty, the Government must bear the weight of proving guilt. After the defendant makes a closing, the Government has the opportunity to make a rebuttal argument, which can be two minutes.

7. Pair groups from opposing sides and do the arguments simultaneously.

8. After the arguments, debrief by asking the following questions:

a. What were the strongest arguments for each side?

b. How would you decide the case? Why? Should a jury be

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[2] In state court in Washington, the instructions are read before the closing arguments.

[3] Irons, Justice at War, p.157-59.

able to decide a law is unfair and should not be enforced?

9. Tell students that in the real case:

The judge instructed the jury that both orders were valid and enforceable, and that they were to find as matters of fact that Hirabayashi was of Japanese ancestry and therefore subject to the orders, that he had violated the curfew, and that he failed to report for evacuation. Based on these findings, the judge instructed the jury to find Hirabayashi guilty! The jury returned in 10 minutes with a finding of guilty on both counts.

At sentencing the next day, the judge took the five months that Hirabayashi had already spent in the King County Jail into account, and sentenced him to 30 days on each count, to be served consecutively. Gordon then asked if he could serve a longer sentence--90 days--because he had found that if his sentence were at least 90 days, he would be allowed to serve the sentence outside a prison, in a roadcamp. The judge agreed, and changed the sentence to 90 days for each count, to be served concurrently (at the same time). Hirabayashi and his lawyers agreed, not realizing that the U.S. Supreme Court would use the concurrent sentences to avoid ruling on the constitutionality of the exclusion order, and rule only on the curfew order, considered to be less obtrusive, and therefore more "justifiable."[4] (This will be discussed more fully below.)

10. Tell students that Hirabayashi appealed his case, and it was heard by the U.S. Supreme Court, which issued an opinion affirming his conviction on June 21, 1943. Ask students to read Handout 5. Check for understanding by asking the following questions:

a. What were Hirabayashi's arguments?

Hirabayashi argued:

That Congress should not have delegated its legislative power to the military by allowing military commanders to issue orders requiring the curfew and exclusion.

That the orders violated the due process clause of the 5th amendment by unfairly discriminating against Japanese Americans as a class.

b. What were the government's arguments?

The government argued:

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[4] Irons, Justice at War.

That the military commander had proper authority from Congress and the President, and that there had been no time to determine the loyalty of individual Japanese Americans.

The Japanese, due to social, economic and political conditions, were not assimilated into the white population. This isolation might have increased their attachment to Japan, making them potentially willing to aid the enemy.

The government's actions were reasonable considering all of the circumstances.

c. What did the Court decide? Why?

The Court ruled unanimously to affirm Hirabayashi's conviction. The decision states that, given the danger, a curfew was "an appropriate measure against sabotage."

d. Try to put yourself in the year 1943. The country is at war with Japan. Do you support the Court's decision? What do you think about the opinion from your perspective today?

11. Finally, tell students that since the Supreme Court decision, the country has reexamined its treatment of the Japanese during World War II. Ask them to read Handout 6.

12. As a culminating activity, ask students to complete Handout 8, an opinion poll that brings some of the issues we have dealt with into the present.

UNITED STATES V. GORDON HIRABAYASHI
BACKGROUND

In early 1942, the United States was at war with Japan, following the surprise attack on Pearl Harbor on December 7, 1941. Almost immediately, the Japanese went on to attack Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. Many people feared Japanese air raids and invasion of the west coast by Japanese forces. Attitudes to Japanese Americans went from relative tolerance to hostility. For example, Henry McLemore, a syndicated columnist wrote in his January 29, 1942 column in the San Francisco *Examiner*:

> "I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior. . . . I don't mean a nice part of the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands. . . . Personally, I hate the Japanese. And that goes for all of them."

Other newspapers carried reports of "fifth column"[1] activities by Japanese aliens and Japanese American citizens living on the west coast of the United States. The Washington Post, on February 17, 1942, carried a column by Walter Lippmann, the nation's most prestigious political commentator, under the headline:

"THE FIFTH COLUMN ON THE COAST."[2]

> "It is a fact that communication takes place between the enemy at sea and enemy agents on land. . . .
>
> [The fact that since] the outbreak of the Japanese war there has been no important sabotage on the Pacific Coast . . . is a sign that the blow is well-organized and that it is held back until it can be struck with maximum effect. . . .
>
> Nobody's constitutional rights include the right to reside and do business on a battlefield. . . . And nobody ought to be on a battlefield who has no good reason for being there. There is plenty of room elsewhere for him to exercise his rights."

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[1] The term "fifth column" means civilian sympathizers.

[2] Irons, Peter, Justice at War, Oxford University Press, 1983, p.60.

Reacting to public pressure, and relying on the advice of the War Department that military necessity required it, President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942.

Congress passed Public Law 503 a few weeks later, making it a crime to violate any of the orders that military commanders prescribed. Lt. General John L. DeWitt, appointed Military Commander of the Western Defense Command on February 20, 1942, began immediately to issue orders pursuant to Executive Order 9066.

These orders included Public Proclamation No. 3, ordering all persons of Japanese ancestry, both aliens and Japanese American citizens, within certain military areas, to remain in their homes between the hours of 8:00 p.m. and 6:00 a.m. This is referred to as the "curfew order."

DeWitt also issued a series of "exclusion orders," ordering all persons of Japanese ancestry to leave their homes and report to assembly centers..

Gordon Hirabayashi was a student at the University of Washington in the spring of 1942, when the curfew and exclusion orders were issued. Gordon had been born in Auburn, outside Seattle, and attended public schools in King County, where he was a Boy Scout. Later, at the University, Gordon was active in the YMCA and the Society of Friends, or Quakers. Gordon's parents were both born in Japan and came to the U.S. as teenagers.

Gordon decided to defy the orders, because:

> "It was my feeling at that time, that having been born here and educated and having the culture of an American citizen, that I should be given the privileges of a citizen--that a citizen should not be denied such privileges because of his descent. I expressed my thoughts that I had a right to stay."

Gordon turned himself in to the F.B.I. on May 16, 1942, and was placed in the King County Jail, where he remained until his trial.

Comm #1'652
Bail $ 5000⁰⁰

Jail

United States District Court

Western District of Washington
Northern Division

.............MAY......Term, 19..42

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GORDON KIYOSHI HIRABAYASHI

Defendant

No. 45738

INDICTMENT

United States of America
WESTERN DISTRICT OF WASHINGTON
Northern Division
} ss:

Vio. Pub. Law 503, Curfew Act;
Vio. Civilian Exclusion Order
No. 57.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

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UPSICEL Unit Five,
Handout 2-Indictment

COUNT I

That GORDON KIYOSHI HIRABAYASHI, being a person of Japanese ancestry, whose true and full name is to the Grand Jury unknown, on or about the 11th day of May, 1942, and continuing until the date of the return of this indictment, at the City of Seattle, Northern Division of the Western District of Washington, and within the jurisdiction of this Court then and there residing and being within the geographical limits of Military Area No. 1, as such area is defined and described in Public Proclamations Nos. 1 and 2, issued by J. L. De Witt as Lieutenant General of the United States Army and as the Military Commander of the Western Defense Command, Fourth Army, and so designated by the Secretary of War, pursuant to the Executive Order below described, did then and there commit an act in said military area contrary to the military orders applicable to said military area, to-wit: contrary to the restrictions of Civilian Exclusion Order No. 57, dated May 10, 1942, issued by the said Military Commander pursuant to Executive Order No. 9066, issued by the President of the United States on February 19, 1942, in that during all of the times above mentioned the said GORDON KIYOSHI HIRABAYASHI, being an individual living alone within the area prescribed by said Civilian Exclusion Order No. 57, he, the said GORDON KIYOSHI HIRABAYASHI, did then and there fail and neglect to report to the Civil Control Station located at Christian Youth Center, 2203 East Madison Street, Seattle, Washington, on Monday, May 11, 1942, between the hours of 8:00 o'clock A.M. and 5:00 o'clock P.M., or at all, and did fail to report to said Civil Control Station on May 12, 1942, between the hours of 8:00 o'clock A.M. and 5:00 o'clock

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P.M., or at all, contrary to directions of said Civilian Exclusion Order No. 57, when the said GORDON KIYOSHI HIRABAYASHI knew and should have known of the existence and extent of the said orders and order and that the said acts above set forth were in violation of said orders; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

That on or about May 4, 1942, GORDON KIYOSHI HIRABAYASHI, being a person of Japanese ancestry, and then and there residing and being within the geographical limits of Military Area No. 1, as such area is defined and described in Public Proclamation No. 1, duly issued by J. L. De Witt, Lieutenant General of the United States Army and designated as Military Commander of the Western Defense Command, Fourth Army, by the Secretary of War, pursuant to the Executive Order below described, did then and there commit an act within said military area and contrary to the restrictions applicable within said Military Area No. 1, which act was contrary to the restrictions of Public Proclamation No. 3, issued March 24, 1942, by the aforesaid Military Commander, pursuant to Executive Order No. 9066, issued by the President of the United States on February 19, 1942, in that the said GORDON KIYOSHI HIRABAYASHI failed to obey paragraph No. 1 of said Public Proclamation No. 3, which provides as follows:

> "1. From and after 6:00 o'clock A.M., March 27, 1942, * * * all persons of Japanese ancestry residing or being within the geographical limits of Military Area Number 1 * shall be within their place of residence between the hours of 8:00 o'clock P.M. and 6:00 o'clock A.M., which period is hereinafter referred to as the hours of curfew,"

UPSICEL Unit Five,
Handout 2-Indictment

in that the said GORDON KIYOSHI HIRABAYASHI was not within his place of residence at Seattle, Washington, between the hours of 8:00 o'clock P.M. and 6:00 o'clock A.M., on or about May 4, 1942, when he, the said GORDON KIYOSHI HIRABAYASHI, knew or should have known of the existence and extent of said restrictions and order and that his act was in violation thereof; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. Charles Dennis
United States Attorney

Allen Pomeroy
Assistant United States Attorney

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THE TRIAL

The case was tried on October 20, 1942, before a jury and Judge Lloyd L. Black; in Seattle, Washington. The witnesses were as follows:

Government's Witnesses

Shunto Hirabayashi. Mr. Hirabayashi testified that he and his wife were born in Japan, and that they were the parents of Gordon Hirabayashi. He also testified that he was converted to the Christian religion before coming to the U.S., and that neither he nor his wife had ever been back to Japan, and neither had had any connection with the empire of Japan since coming to this country.

Tom G. Rathbone, testified that the defendant did not report to the Civil Control Station on May 11, 1942 or May 12, 1942. Rathbone testified that the defendant did voluntarily turn himself in on May 16, 1942, and admitted that he knew of the orders to report, but refused to do so because he believed the orders were unconstitutional and deprived him, as a native born American citizen, of his rights under the Constitution.

H.H. McKee, Special Agent of the F.B.I., testified that the defendant voluntarily came to his office and stated that he could not obey the orders because he believed them unlawful.

Floyd Schmoe, testified that, on the evening of May 9, 1942, the defendant left his residence after the hour of 8:00 p.m. Mr. Schmoe also testified that the defendant had said that he believed that the orders were unconstitutional, and to obey them would be waiving his rights as an American citizen.

Three other government witnesses corroborated the testimony that the defendant had stated that he could not voluntarily obey the orders because they were unconstitutional.

Defendant's Witnesses

Gordon Hirabayashi testified in his own behalf. He testified that he was born in Seattle, King County, Washington April 23, 1918, and was educated in the public schools of King County. He was a senior at the University of Washington, majoring in mathematics at the time of his incarceration in the King County Jail. He also stated that he had never been to Japan nor had any connection with the Japanese government, nor corresponded with any person in Japan. He testified that his parents had always taught him and his brothers and sisters that they are American citizens and how to conduct themselves as such; that he had been active in the Boy Scout movement, having been a life scout in a troop of Japanese boys and assistant scout master; that he was active in the Y.M.C.A. at the University, and had represented the

University Y.M.C.A. at conferences in other states; that he had learned what is expected of good American citizens, and what his rights are as an American citizen; and that he had at all times tried to conduct himself as one; and that he had never been arrested.

Gordon further testified that he had not reported to the Civil Control Center, and had not remained within his residence during the curfew hours because he honestly believed that the evacuation and curfew orders were and are unconstitutional and violated his rights as an American citizen; that he believed that the orders discriminated against him and other American citizens of Japanese ancestry on the basis of race and color, which he had been taught to believe is against one of the fundamental principles upon which our government is founded; and that he believed it to be his right and duty as an American citizen to defend this action in order that the constitutional questions involved could be determined in a court of law.

M.D. Woodbury testified on behalf of the defendant that he had known Gordon for three years and that he had at all times conducted himself as a law abiding American citizen, and was well respected among his fellow students and the community.

FIFTH AMENDMENT - U.S. CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

- - - - - - - -

UNITED STATES OF AMERICA,
Plaintiff,
- vs -
GORDON KIYOSHI HIRABAYASHI,
Defendant.

No. 45738

- - - - - - - - -

GOVERNMENT'S REQUESTED INSTRUCTIONS

Comes now the United States of America, plaintiff herein, and respectfully requests this Honorable Court to make the following instructions in the above entitled cause.

FILED IN THE
[illegible]

BEST COPY AVAILABLE

INSTRUCTION NO. ______

The indictment involved in this action in Count I rges the defendant, who is alleged to be a person of anese ancestry, with violating Civilian Exclusion Order 57, by failing to report to the Civilian Control Station.

In Count II the indictment charges said defendant th violating the curfew provisions of Public Proclamation 3 issued by the Military Commander of the Western De- nse Command.

On December 8, 1941, Congress, in joint resolution, clared a state of war to be existing between Japan and the vernment and people of the United States.

On February 19, 1942, the President signed an cutive Order in which the Secretary of War and military manders designated by him, were authorized and directed, never such action was necessary

> " * * * to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion * * *."

On February 20, 1942 the Secretary of War desig- ted Lieutenant General DeWitt to carry out the duties responsibilities imposed by the said Executive Order the particular district involved in this action.

On March 2, 1942 Lieutenant General DeWitt declared Pacific Coast of the United States to be, because of its graphical location

> " * * * particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations."

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UPSICEL Unit Five
Handout 4-Jury Instructions

On March 21, 1942 Public Law No. 503, enacted by Congress, became effective. The portion material to this action reads as follows:

> " * * * whoever shall * * * leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive Order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor * * *."

I instruct you as a matter of law that the foregoing regulations were valid regulations, and the laws under which they were promulgated are valid and enforceable laws.

INSTRUCTION NO. ____

As far as Count I of the indictment is concerned, you are concerned with the following:

(1) Was the defendant Gordon Kiyoshi Hirabayashi of Japanese ancestry.

(2) Did he on May 11, 1942 fail and neglect to report to the Civil Control Station located at the Christian Youth Center, 2203 East Madison Street, Seattle, Washington, between the hours of eight o'clock A.M. and five o'clock P.M., or at all.

(3) Did he on May 12, 1942, between the hours of eight o'clock A.M. and five o'clock P.M., or at all, fail to report to the Civil Control Station located at the Christian Youth Center, 2203 East Madison Street, Seattle, Washington.

(4) Did he know of the existence of the orders to report.

If you find from the evidence, beyond a reasonable doubt, that the defendant herein was a person of Japanese ancestry, that he either knew or should have known of the existence and extent of the orders requiring him to report on either May 11, 1942, or May 12, 1942, and you further find from the evidence, beyond a reasonable doubt, that he failed to so report, then, in that event, you are instructed to return a verdict of guilty as to Count I of the indictment.

BEST COPY AVAILABLE

INSTRUCTION NO. ______

As to Count II, the indictment charges that the defendant Gordon Kiyoshi Hirabayashi failed to obey Paragraph No. 1 of Public Proclamation No. 3, which provides as follows:

> "1. From and after 6:00 A.M., March 27, 1942, * * * * all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, * * * * * shall be within their place of residence between the hours of 8:00 P.M. and 6:00 A.M., which period is hereinafter referred to as the hours of curfew."

I hereby instruct you that the City of Seattle on May 4, 1942, and at all times since said date, was within the geographical limits of Military Area No. 1.

I further instruct you that if you find from the evidence, beyond a reasonable doubt, the following facts: (1) that the defendant herein, Gordon Kiyoshi Hirabayashi, was of Japanese ancestry; (2) that he either knew or should have known of the curfew regulations; (3) that on or about May 4, 1942 the said defendant failed to obey said curfew regulations in the manner following, that is to say: he was not within his place of residence at Seattle, Washington, between the hours of eight o'clock P.M. and six o'clock A.M., then your verdict should be guilty as to Count II.

INSTRUCTION NO. ______

I further instruct you that it is not necessary that the Government prove that the offense herein was committed on the exact date set forth in the indictment. If you find from the evidence, beyond a reasonable doubt, that the defendant herein committed the offense charged at any time between May 4, 1942 and May 28, 1942, then, in that event, you should bring in a verdict of guilty.

United States of America,
-vs-
Gordon Kiyoshi Hirabayashi

GOVERNMENT'S REQUESTED JURY INSTRUCTIONS--ARGUMENTS FOR COUNSEL SUMMARY

The Defendant is charged with breaking two laws, or "counts" -- (1) failing to report to the Civilian Control Station for exclusion (Count I); and (2) violating the curfew order (Count II).

Background of the case as presented by the government:

On December 8, 1941 Congress declared war against Japan

On February 19, 1942, President Roosevelt signed Executive Order 9066, which authorized military commanders to define military areas from which certain persons could be excluded.

On March 2, 1942, Lieutenant General DeWitt declared the Pacific coast of the U.S. to be subject to attack by the Japanese, subject to acts of espionage.

On March 21, 1942 Congress passed Public Law 503, making it a misdemeanor (a crime punishable by less than 1 year in jail) to violate any of the orders of Lieutenant General DeWitt.

Therefore, the nation is in extreme danger and must protect itself from spying and espionage by the enemy and its agents. This is an emergency situation. These measures are required by military necessity.

Count I: The Government asks the Judge to tell the jury it must decide:

(1) Was Gordon Kiyoshi Hirabayashi of Japanese ancestry?

(2) Did he fail to report to the Civilian Control Station on May 11, 1942 or May 12, 1942?

(3) Did he know that the orders he violated had been issued?

If the answer to all of these questions is yes, then the jury must find Gordon Kiyoshi Hirabayashi guilty of Count I.

Count II: The Government asks the Judge to tell the jury it must decide:

(1) Was Gordon Kiyoshi Hirabayashi of Japanese ancestry?

(2) Did he know about the curfew order?

(3) Was he at home between the hours of 8:00 p.m. and 6:00 a.m. on May 4, 1942?

If the answer to all of these questions is yes, then the jury must find Gordon Kiyoshi Hirabayashi guilty of Count II.

In planning your argument, first focus on the national emergency argument--that the nation is in danger of invasion by the enemy, and must protect itself from spying and espionage by enemy agents.

Then, address each Count in the Indictment. Consider: What testimony was given at the trial to prove each part of Count I?

For example: Was Hirabayashi of Japanese ancestry?

Who testified about this?--His father, and Gordon Hirabayashi himself.

Did he fail to report?

Who testified about this?--

Did he know the order had been issued?

Who testified about this?

Continue for Count II.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

NITED STATES OF AMERICA,)
Plaintiff)
v.) No. 45738
GORDON KIYOSHI HIRABAYASHI,)
Defendant)

PROPOSED INSTRUCTIONS OF THE DEFENDANT

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION
(93)
OCT 20 1942
JUDSON W. SHORETT, Clerk
By EMRoser Deputy

INSTRUCTION NO._____

You are instructed that Executive Order No. 9066 of the President and Civilian Exclusion Order No. 57 and Public Proclamation No. 3 of the Military Commander were issued for the purpose of protecting our national defense materials, national defense premises, and national defense utilities against acts of espionage or sabotage.

You are further instructed that before any person could or can be excluded from any military area prescribed by the Military Commander or interned or compelled to obey any curfew regulations prescribed by a military commander, such person must first have been charged with engaging in or commiting acts of espionage or sabotage of our national defense materials, premises or utilities; that he must have been given a hearing on such charges before an impartial tribunal where he could defend himself against the charges, have legal counsel to assist him and could produce witnesses on his own behalf; that after such hearing he must have been found guilty of the charge or charges against him; and that without such a hearing on such charges and his conviction thereof he would be under no duty to report to the Civil Control Station described in Count I of the indictment, nor to obey the curfew regulations described in Count II of the indictment.

Therefore, unless you find from the evidence at this trial that the defendant here was so charged with engaging in espionage or sabotage of our national defense materials, premises or utilities and after a hearing on such charges was convicted thereof, you can not find the defendant guilty under either count of the indictment.

BEST COPY AVAILABLE

INSTRUCTION NO._____

You are instructed that under a statute enacted by the Congress of the United States, alien enemies are defined as the "natives, citizens, denizens or subjects of the hostile nation or government" which has been declared by the President to be at war with the United States.

You are further instructed that the law presumes that such an alien enemy as above defined will commit acts of espionage or sabotage against the United States, and on the basis of such presumption such an alien enemy can be temporarily restricted in his liberty of movement, or can be temporarily excluded from a military area, or can be temporarily compelled to obey curfew or other regulations relative to his movements and conduct; but that before such restriction of liberty, exclusion from a military area or obedience to such regulations could be made permanent, such alien enemy would first have to be charged with the commission of some act or acts of espionage or sabotage against the United States and have been granted a hearing before an impartial tribunal where he could defend himself against such charges, and must have been found guilty of the act or acts charged.

But you are further instructed that as to citizens of the United States of America no such presumption as above described exists either in law or in fact, and that before any citizen of the United States of America can be temporarily or permanently excluded from a military area or compelled to obey curfew or other regulations or have his liberty of movement restricted, he must first have been charged with some act or acts of espionage or sabotage against the United States, have been granted a hearing on such charges before an impartial tribunal, and have been found guilty of the acts charged.

You are further instructed that the above protection accorded a United States citizen is guaranteed to him by the Constitution of the United States of America, and no discrimination can be made against him in that protection because of his race or color.

You are further instructed that the evidence at this trial proves in this case that the defendant here is a native born citizen of the United States of America, of Japanese ancestry, and that as such he is entitled to the above described constitutional protection regardless of his race, color or ancestry.

Therefore, unless you further find from the evidence here that the defendant was charged with an act or acts of espionage or sabotage against the United States, was granted a hearing on such charges where he was permitted to defend himself, and was found guilty of the act or acts charged, then I instruct you that the defendant owed no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty under either count of the indictment.

INSTRUCTION NO._____

You are instructed that the Congress of the United States of America alone has the power to declare martial law in or over any portion of the United States, and that this power can not be delegated to the President or the Secretary of War or to any military commander designated by him.

You are further instructed that in the present emergency military law has not been declared by the Congress in or over any portion of the United States.

You are further instructed that the existence of a state of war between the United States and a foreign country does not suspend the rights guaranteed by the Constitution that no person can be deprived of his life, liberty or property without due process of law. Such due process of law includes the right of a person to have a public hearing after he has been informed of the nature and cause of the accusation against him and his right to defend against such accusation, have counsel to assist in his defense, and to compel witnesses to testify on his behalf.

You are further instructed that unless you find from the evidence here that the defendant was accused of some unlawful act against the United States, was granted a hearing on such accusation where he was allowed to defend himself, and was found guilty of what he was accused, then I instruct you that the defendant was under no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty.

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United States of America,

-vs-

Gordon Kiyoshi Hirabayashi

DEFENDANT'S REQUESTED JURY INSTRUCTIONS--ARGUMENTS FOR COUNSEL SUMMARY

The Defendant asks the Judge to tell the jury:

(1) President Roosevelt and the military commander DeWitt issued the exclusion and curfew orders in order to protect the United States from acts of espionage (spying by agents of the Japanese government).

> Before a person can be excluded from the west coast or required to obey the curfew order, that person must first have been charged with committing some actual act of espionage or spying; and be allowed to defend him or herself from those charges.
>
> Unless you find that the defendant was charged with some act of espionage, you cannot find him guilty of either Count I or Count II.

(2) The defendant is a native-born citizen of the United States, of Japanese ancestry, and is entitled to the protection of the U.S. Constitution and the due process of the law. Due process entitles him to:

(a) a public hearing after being informed of the charges against him,

(b) the right to defend himself against the charges,

(c) the right to have a lawyer help him in his defense, and

(d) the right to have witnesses testify in his behalf.

> Unless you find that the defendant received due process of law, you must find that he was not required to comply with the military orders, and you must find him not guilty of Count I or Count II.

(3) Further, the U.S. Constitution guarantees the equal protection of the laws to all U.S. citizens, regardless of race or color. These orders discriminate against Japanese-Americans

as a class of people, rather than looking at each individual and whether or not they are guilty of spying.

> There is no evidence that Gordon Hirabayashi is guilty of spying.

No discrimination can be made against the defendant solely because of his race or color. There must be proof that he is guilty of spying.

THE APPEAL TO THE U.S. SUPREME COURT

Hirabayashi's was the first case the Supreme Court heard regarding the constitutionality of the military orders issued pursuant to Executive Order 9066. Hirabayashi's lawyers argued that Congress unconstitutionally delegated its legislative power to the military by authorizing DeWitt to issue the orders, and that the due process clause of the fifth amendment prohibited the discrimination against citizens of Japanese descent. Since Hirabayashi was a loyal citizen, he should be treated as an individual. He was deprived of his life, liberty and property without due process of law.

The government argued that the military commander (DeWitt) had authority from Congress and the President, and that there was no time, due to the imminent danger of air raids and invasion by Japanese forces, to determine the loyalty of individual Japanese citizens.

The Court issued a unanimous ruling, affirming Hirabayashi's conviction, and upholding the government's action. The Court chose to address only the curfew order, because the trial judge had made the sentences on the two convictions concurrent. The Court found that under the war powers given to the President and Congress in Articles I and II of the Constitution, the President and Congress have wide discretion to determine the nature and extent of the danger during war, and how to resist it. The Court concluded that there was a "substantial basis" for the action taken, citing information about how Japanese had not assimilated into the white population, how Japanese children attended Japanese language schools believed to be sources of Japanese nationalistic propaganda, and how many Japanese American citizens were actually citizens of Japan also, since Japan allowed dual citizenship.

The Court then turned to the discrimination argument, and began by pointing out that the fifth amendment does not contain an equal protection clause, such as found in the fourteenth amendment.[1] (The fourteenth amendment is specifically aimed at discrimination by the states, not the federal government. In the 1950's the Supreme Court informally "incorporated" the equal protection clause of the fourteenth amendment into the due process guarantees of the fifth amendment, which applies to the federal government.[2])

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[1] The fourteenth amendment (1968) provides in part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

After stating that distinctions between citizens solely because of their race are "odious to a free people whose institutions are founded upon the doctrine of equality," and that discrimination based on race alone would be insupportable, "were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas," the Court concluded that:

> The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant.

a. What were Hirabayashi's arguments?

b. What were the government's arguments?

c. What did the Court decide? Why?

d. Try to put yourself in the year 1943. The country is at war with Japan. Do you support the Court's decision? What do you think about the opinion from your perspective today?

THE OTHER SUPREME COURT CASES ON THE INTERNMENT

Gordon Hirabayashi's case and the cases filed by three other individuals challenging Executive Order 9066 and other orders issued pursuant to it can be classified into three categories, based on the U.S. Supreme Court's treatment of the issues in its decisions:

Challenge of the **curfew** orders--Hirabayashi v. U.S., 320 U.S. 81 (decided June 21, 1943), Yasui v. U.S., 320 U.S. 115 (decided June 21, 1943)

Both unanimous decisions, in which the Court upheld the constitutionality of the curfew order, as applied to Gordon Hirabayashi and Minoru Yasui.

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[2] Bolling v. Sharpe, 347 U.S. 497 (1954).

Challenge of the **exclusion** orders--Korematsu v. U.S., 323 U.S. 214 (decided Dec. 18, 1944)

The Court, in a 6-3 decision, relied on the Hirabayashi case, and affirmed the conviction of Korematsu, upholding the constitutionality of the exclusion orders, as applied to Korematsu. Doing another side-step, the Court also avoided ruling on the issue whether it would be constitutional to detain Korematsu, concededly a loyal citizen, in one of the camps, since there was no evidence that he would have been sent to a camp, had he reported to an assembly center! Justice Roberts, one of the dissenters, along with Justices Murphy and Jackson, characterized the exclusion orders as "imprisonment in a concentration camp, based on ancestry."

Challenge of the **detention**--Ex Parte Endo, 323 U.S. 283 (decided Dec. 18, 1944)

Finally, in this *habeas corpus* challenge by Mitsuye Endo, the Court, in a unanimous decision, found that Endo, as a loyal citizen, could not be legally detained in a camp. The day before the Endo case was decided, the government announced that the camps would close.

THE AFTERMATH

Since the Supreme Court decisions, the country has reexamined its treatment of the Japanese during World War II. In 1976, President Ford rescinded Executive Order 9066, and in 1980 Congress repealed Public Law 503 and created the Commission on Wartime Relocation and Internment of Civilians.

The Commission conducted hearings on the internment from July to December 1981. The Commission's report **Personal Justice Denied**, issued December 1982, concludes that "a grave injustice" had been committed against Japanese Americans.

In 1985, Gordon Hirabayashi had a second trial, on his *coram nobis* petition, described in the article in the Nation. The evidence at trial consisted of documents found at the National Archives, and others obtained under a Freedom of Information Act request that showed that government lawyers during the appeal to the U.S. Supreme Court in 1943 had intentionally withheld important intelligence reports and other evidence from the courts that showed that the "military necessity" for the internment was less dire than asserted.

For example, the government lawyers had claimed that there was no time to determine the loyalty of individual Japanese Americans. The evidence uncovered revealed that the military commanders had decided that it would be impossible to determine loyalty of the Japanese, **regardless** of the time factor.

The judge at Hirabayashi's second trial set aside the conviction on Count I, the exclusion order, but not Count II, the curfew order. Both sides appealed, and the Ninth Circuit Court of Appeals set aside both convictions. Finally, in 1987, Gordon Hirabayashi's struggle to clear his name was over!

In August 1988, Congress passed a statute that provides compensation, up to a maximum of $20,000 per individual, for Japanese-Americans and resident aliens who were living as of August 10, 1988 and who were confined, held in custody, relocated or otherwise deprived of property or liberty as a result of Executive Order 9066. To date, that money has not been paid.

UPSICEL Unit Five
Handout 7-Chronology

A STUDY OF THE JAPANESE INTERNMENT CASES USING ORIGINAL DOCUMENTS

CHRONOLOGY OF EVENTS - GORDON HIRABAYASHI V. UNITED STATES

Early 1900's	Japanese encouraged to immigrate and provide cheap farm labor in the western U.S.
1913	Webb Act - California Alien Land Law, denying Japanese born in Japan the right to own land in the U.S.
April 23, 1918	Gordon Hirabayashi born in Seattle, Washington
1924	Immigration Exclusion Act - Closed all immigration to the U.S. from Japan
1918-1937	Hirabayashi educated in public schools of King County, Washington, active in Boy Scouts
1937	Hirabayashi enters the University of Washington, where he is active in the Y.M.C.A. and Society of Friends (Quakers)
December 7, 1941	Japanese planes bomb Pearl Harbor
December 8, 1941	U.S. declares war on Japan
February 19, 1942	President Roosevelt signs Executive Order No. 9066
February 20, 1942	Lt. General DeWitt is appointed Military Commander of the Western Defense Command, to carry out the evacuation.

March 2, 1942	In Public Proclamation No. 1, DeWitt creates Military Areas One and Two on the West coast and warns that "persons or classes of persons" as the situation may require will be excluded from Military Area One (western half of CA, OR, and WA, and so. AZ)
March 18, 1942	War Relocation Authority established, to coordinate evacuation program
March 21, 1942	Roosevelt signs **Public Law 503**, enacted by Congress to impose criminal penalties to punish violation of the military orders issued by DeWitt-misdemeanor to knowingly violate orders
March 24, 1942	De Witt institutes in Military Area No.1 an 8 p.m. to 6 a.m. **curfew** for all persons of Japanese ancestry, both aliens and Japanese American citizens (Public Proclamation No. 3 - "curfew order")
	Civilian Exclusion Order No. 1 issued, ordering the 54 Japanese-American families living on Bainbridge Island to report to Puyallup Assembly Center
March 27, 1942	De Witt orders that after March 29, 1942 no person of Japanese ancestry will be permitted to leave Military Area One (Public Proclamation No. 4 - "freeze order")

May 4,9, 1942	Gordon Hirabayashi, Univ. of Wash. student, violates curfew order, by staying in the library to study with his classmates (he keeps diary, in which he records his curfew violations)
May 10, 1942	Civilian Exclusion Order No. 57 (covering University District area where Hirabayashi lived) issued by General DeWitt, ordering all persons of Japanese ancestry to report on May 11 or 12 to Civil Control Station in Seattle
May 11-12, 1942	Hirabayashi fails to report to Civil Control Station
May 16, 1942	Hirabayashi reports to FBI, and is taken to jail for violation of Exclusion Order No. 57; FBI finds diary and he is also charged with violation of curfew order
October 1942	Hirabayashi tried before a jury and the Honorable Lloyd Black, U.S. District Court, Western District of Wash., Seattle, Washington, and found guilty of violation of the curfew and exclusion orders
June 1943	Hirabayashi's conviction unanimously upheld by the U.S. Supreme Court
December 17, 1944	War Relocation Authority announces that camps will close

1976	President Gerald Ford rescinds Executive Order 9066 and calls the internment a "mistake"
1980	Congress creates the Commission on Wartime Relocation and Internment of Civilians; repeals Public Law 503
1980-1982	Researcher Aiko Herzig-Yoshinaga finds documents at National Archives proving that government lawyers suppressed evidence at trial
1983	Hirabayashi files petition for writ of *coram nobis*, seeking vacation of his convictions, on the grounds that the government knowingly suppressed evidence during his trial and appeal.
Sept. 1987	Ninth Circuit Court of Appeals grants petition to vacate both convictions.

OPINION POLL - HOW FAR CAN THE GOVERNMENT GO?

Directions: Read the following statements and place the letter that most closely corresponds with your opinion in the left-hand blank. SA (strongly agree), A (agree), U (undecided), D (disagree), SD (strongly disagree).

____1. The U.S. is at war with Iraq. There have been threats of terrorism against Americans, and reports that Iraqis in the U.S. are planning terrorist attacks in major American cities. The U.S. government should be able to require all Iraqi aliens in the United States to report to the government for questioning.

____2. The U.S. is at war with Iraq. There have been terrorist attacks on American citizens living in Los Angeles, allegedly led by Iraqis. The government should be able to require all American citizens of Iraqi descent living in the Los Angeles area to report to the F.B.I. for questioning.

____3. The U.S. is at war with Iraq. An American passenger plane was destroyed by a terrorist bomb, killing 250 people. Airline officials in the U.S. should have the right to stop and question anyone boarding an airplane who looks like an Iraqi.

____4. Both homosexual men and drug addicts with AIDS should be forcibly quarantined (kept in isolation from all other people) until the AIDS epidemic is controlled. This would be for their own protection, as well as the safety of the public.

____5. It is the year 1997. The drug problem in the U.S. has reached epidemic proportions. Crack dealers are on every street corner, and crack houses have taken over large areas in many American cities. The President has issued an Executive Order, declaring the situation a national emergency and authorizing the National Guard to round up dealers and users within areas to be determined by commanders of the National Guard and put them in prison. This should be allowed.

____6. Crime involving teenagers in the early morning hours has been on the rise in a large urban area. In order to protect teens from being victims of crime, and to control roving gangs of teens, a curfew should be enacted by the County Council. The curfew would require that everyone 16 years old and under be off the streets between the hours of 11:00 p.m. and 6:00 a.m.

HISTORY OF THE BILL OF RIGHTS

Source:

Written by the University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1

Objectives:

As a result of this lesson, students will be better able to:

1. List the rights contained in the body of the Constitution.
2. Identify why no Bill of Rights was contained in the Constitution of 1787.
3. Identify the players in the process for obtaining a Bill of Rights.
4. Explain how the original Bill of Rights limited federal action and how the 14th amendment limited state action.

Materials:

Prior to class, the instructor should make a copy of the *Questions for Students* and cut up the copy so that there is one question on each slip of paper. Put the questions into some type of hat so that students may draw out the questions for the game.

Procedures:

1. **Inform students** that they will play a Jeopardy-like game on the information contained in the classroom reading and their class work. Pass out Handout 1.

2. **Assign students** in small groups to be particularly knowledgeable of certain sets of facts. Divide students into groups. Each group is responsible for information from assigned Facts: Group 1: Facts 1, 2, 3; Group 2: Facts 5, 6,7,; etc.

3. **After presentations by these groups, assign students to each team** for the Jeopardy-like game so that each team has a member from each small group.

4. **Explain the rules.** Divide the class by rows into teams, with each team selecting a captain to be spokesperson. Students can move their chairs closer together to confer. Put a score sheet on the board, by writing Team A, etc. for each team.

5. **Using some lottery method,** determine which team will go first. The starting team draws a question from the hat and reads the question aloud. The team members confer and the captain must report the correct answer within 30 seconds.

6. If the team correctly answers the question, it is awarded the point value of the question, e.g., RIGHTS for 50. If incorrect, the point total is deducted from the score. Negative totals are possible.

7. **If the question** is not answered correctly, the question is returned to the hat.

8. **The teams take turns** drawing questions from the hat until all the questions are exhausted.

9. **During the course** of the game, a selection of a question may result in the "Daily Double Question." If successful they get double the point value.

After all questions are answered or after 40 minutes, the instructor totals each team's points. All teams decide in writing (collected by the instructor prior to reading the question) how many of their points they wish to risk on the last question. If they answer their question *in writing* correctly, they earn the amount of points risked. If not, they lose the amount risked.

10. **The winning team** is the team with the highest point total. If an award is available, it would be presented now.

QUESTIONS AND ANSWERS FOR JEOPARDY GAME

HISTORICAL PERSONS

10 points Who is entitled to be called the "Father of the Bill of Rights?" James Madison.
20 points Who helped convince James Madison from his post as Ambassador to France that a Bill of Rights was necessary for the new Constitution of 1787? Thomas Jefferson
30 points True or False. Alexander Hamilton, a Federalist, argued that a Bill of Rights could be dangerous. True.
40 points True or False. James Madison fought to include a Bill of Rights in the Constitution during the Philadelphia Convention. False. He was opposed to including a Bill of Rights until he realized that the new Constitution would fail to be ratified unless one was developed.
50 points Who proposed a Bill of Rights at the Philadelphia Convention? George Mason.

FEDERALIST/ANTI-FEDERALIST

10 points Which favored a strong national government--Federalists or Anti-Federalists? Federalists

20 points **Which favored passing the Constitution of 1787--the Federalists or the Anti-Federalists?** Federalists
30 points **Identify these three men as Federalists or Anti-Federalists: Alexander Hamilton, Patrick Henry, James Madison** Hamilton, Federalist; Henry, Anti-Federalist; Madison, Federalist
40 points **What was the chief strategy of the Anti-Federalists to defeat ratification of the Constitution?** To develop citizen opposition because the Constitution lacked a Bill of Rights.
50 points **What strategy did the Federalists use to get ratification of the Constitution?** To promise to push for amendments to the Constitution to add a Bill of Rights after the Constitution was ratified.

RATIFICATION

10 points **How many states were in the Union in 1791?** 14
20 points **What percentage of the states were necessary to ratify the Bill of Rights?** 75% or 3/4's
30 points **What was the date that the Bill of Rights was ratified?** December 15, 1791
40 points **When this state ratified the Bill of Rights, the Bill of Rights became part of the Constitution.** Virginia
50 points DAILY DOUBLE QUESTION **What year did Georgia and Connecticut ratify the Bill of Rights?** 1939

RIGHTS

10 points **True or False. The Bill of Rights includes the first 14 Amendments to the United States Constitution.** False, only the first ten.
20 points **True or False. Most of the rights contained in the Bill of Rights were modeled on rights listed in the various state constitutions.** True.
30 points **True or False. 2 Live Crew bases its right to sing its songs on the right to free speech.** True.
40 points **True or False. In 1792, the ban on establishment of religion in the Bill of Rights meant that states could not pass laws requiring people to attend church.** False, it only prohibited the federal government, not the state governments, from requiring people to attend church.
50 points **True or False. In 1991, states may not pass laws requiring people to attend church because the ban on establishment of religion in the Bill of Rights has been incorporated through the 14th Amendment's due process clause to apply to states.** True.

FINAL JEOPARDY QUESTION

Jerry was arrested for selling drugs near a school. The legislature passed a law three days after Jerry's arrest that made it a crime to sell drugs in a school drug free zone. This crime had a higher penalty than the crime of

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selling controlled substances. He was charged for selling drugs in a "school drug free zone." Why does this violate the Constitution? This is an ex post facto law.

QUESTIONS FOR STUDENTS

Directions: Instructor should duplicate and then cut up the copy of this set of questions so that one question appears on each slip.

HISTORICAL PERSONS 10 points **Who is entitled to be called the "Father of the Bill of Rights?"**

HISTORICAL PERSONS 20 points **Who helped convince James Madison from his post as Ambassador to France that a Bill of Rights was necessary for the new Constitution of 1787?**

HISTORICAL PERSONS 30 points **True or False. Alexander Hamilton, a Federal-ist, argued that a Bill of Rights could be dangerous.**

HISTORICAL PERSONS 40 points **True or False. James Madison fought to include a Bill of Rights in the Constitution during the Philadelphia Convention.**

HISTORICAL PERSONS 50 points **Who proposed a Bill of Rights at the Philadelphia Convention?**

FEDERALIST/ANTI-FEDERALIST 10 points **Which favored a strong national government--Federalists or Anti-Federalists?**

FEDERALIST/ANTI-FEDERALIST 20 points **Which favored passing the Constitution of 1787--the Federalists or the Anti-Federalists?**

FEDERALIST/ANTI-FEDERALIST 30 points **Identify these three men as Federalists or Anti-Federalists: Alexander Hamilton, Patrick Henry, James Madison**

FEDERALIST/ANTI-FEDERALIST 40 points **What was the chief strategy of the Anti-Federalists to defeat ratification of the Constitution?**

FEDERALIST/ANTI-FEDERALIST 50 points **What strategy did the Federalists use to get ratification of the Constitution?**

RATIFICATION 10 points. **How many states were in the Union in 1791?**

RATIFICATION 20 points **What percentage of the states were necessary to ratify the Bill of Rights?**

RATIFICATION 30 points **What was the date that the Bill of Rights was ratified?**

RATIFICATION 40 points When this state ratified the Bill of Rights, the Bill of Rights became part of the Constitution.

RATIFICATION 50 points DAILY DOUBLE QUESTION What year did Massachusetts, Georgia and Connecticut ratify the Bill of Rights?

RIGHTS 10 points True or False. The Bill of Rights includes the first 14 Amendments to the United States Constitution.

RIGHTS 20 points True or False. Most of the rights contained in the Bill of Rights were modeled on rights listed in the various state constitutions.

RIGHTS 30 points True or False. 2 Live Crew bases its right to sing its songs on the right to free speech.

RIGHTS 40 points True or False. In 1792, the ban on establishment of religion in the Bill of Rights meant that states could not pass laws requiring people to attend church.

RIGHTS 50 points True or False. In 1991, states may not pass laws requiring people to attend church because the ban on establishment of religion in the Bill of Rights has been incorporated through the 14th Amendment's due process clause to apply to states.

FINAL JEOPARDY QUESTION

Jerry was arrested for selling drugs near a school. The legislature passed a law three days after Jerry's arrest that made it a crime to sell drugs in a school drug free zone. This crime had a higher penalty than the crime of selling controlled substances. He was charged for selling drugs in a "school drug free zone." Why does this violate the Constitution?

FACT SHEET ON THE BILL OF RIGHTS

1. The Constitution of the United States was drafted at the Philadelphia Convention, held from May 25, 1787 to September 17, 1787. The job of this convention was to strengthen the national government that had proved itself too weak to govern under the Articles of Confederation. Specifically, under the Articles, the United States was too weak in international affairs, it was unable to enforce the peace treaty, it was in financial crisis, it couldn't respond to Shays's Rebellion and in general it did not have the power to govern.

2. No Bill of Rights was contained in the Constitution that was drafted at the Philadelphia Convention. Not including a Bill of Rights was a deliberate act. Five days before the Convention adjourned, on September 12, 1787, George Mason of Virginia suggested that a Bill of Rights be included into the Preface of the Constitution to quiet the fears of the people. He thought that by using the bills of rights included in the various state constitutions as models, this would take "a few hours" to write.

3. Elbridge Gerry of Massachusetts moved for a committee to prepare a bill of rights and Mason seconded the motion. After a brief discussion, the delegates voted by states and defeated the motion.

4. Even though the new Constitution did not contain a Bill of Rights, there were certain individual rights contained in the Constitution of 1787. Examples include:

a. The right of **habeas corpus** which requires a judge to review immediately a claim of unlawful custody.

b. **Bills of attainder** and **ex post facto laws** are not permitted. Bills of attainder are acts of the legislature to charge, convict, and punish a person for a criminal act. The legislature does not provide counsel, a right to be told of the charges or the accuser or other important rights a person would have if tried in a criminal court.
Ex post facto laws are laws that are passed by a legislature after some act has occurred that: (1) makes that act a crime when it was not a crime at the time it happened, or (2) makes the punishment more than it was at the time the crime occurred, or (3) changes the rules of evidence in order to obtain a criminal conviction.

c. A **ban on titles** of nobility. This guarantees against a privileged class.

d. **Criminal trial rights**, including right to a jury trial and a definition of treason to prevent improper convictions.

e. Freedom of **speech and debate for members** of Congress.

f. A guarantee that citizens of each state should have the **same privileges and immunities** as citizens of other states.

5. Why was there no Bill of Rights in the Constitution of 1787? The specific reason for the Constitutional Convention was to strengthen a too-weak central government. The overwhelming majority of the convention believed that a Bill of Rights was unnecessary.

6. The Federalists were people who favored a strong federal government. They were not opposed to the idea of a Bill of Rights, but believed it was unnecessary to a form of government where the government only has the limited powers given to it. Since the people keep everything that they do not give away, they do not need to have a bill of rights.

Alexander Hamilton, expressed the Federalist position in Federalist Paper Number 84, arguing that a Bill of Rights might be dangerous to individual rights because the government could claim that everything not listed in the Bill of Rights, the government has the power to do. He also argued that since each state had its own bill of rights, a national set was not needed.

7. Hamilton's arguments had some difficulties. In reality, six of the states had no bill of rights in their state constitutions, and no state had a full list of rights. For example, Virginia's Declaration of Rights (the first state bill of rights) did not provide for freedom of speech, assembly, and petition, the right to habeas corpus, the right to grand jury proceedings, the right to counsel, separation of church and state, and freedom from double jeopardy and from ex post facto laws and bills of attainder.

8. The Anti-Federalists were people who supported strong state governments and were opposed to a strong federal government. The Anti-Federalists wanted the Constitution of 1787 defeated. Their chief strategy was to use the lack of a bill of rights to get people to oppose ratifying the new Constitution, although their real concern was that the new Constitution gave too much authority to the new national government, especially the powers to tax, to regulate commerce and to enact laws that are necessary and proper.

Anti-Federalists, like Patrick Henry of Virginia, pointed out that Hamilton's arguments made no sense since some rights were included in the Constitution, like trial by jury in criminal cases, ex post facto laws, etc. Why should others be left out?

9. The Federalists agreed to amend the new Constitution to add a Bill of Rights after ratification. This was an important strategy to prevent a new general Convention that might undo the work done at the Philadelphia Convention.

James Madison of Virginia, a Federalist, switched his position against a Bill of Rights and voted to recommend a Bill of Rights in the first Congress after ratification. Thomas Jefferson, who was serving as U.S. Ambassador to France, wrote letters to James

Madison that helped persuade him that a Bill of Rights was necessary.

To honor his commitment and to prevent a new convention that might change the new Constitution, James Madison took the lead at the First Congress and submitted a Bill of Rights.

For his efforts, he is entitled to be called the "Father of the Bill of Rights." He submitted his list of rights taken from state constitutions and from state ratifying conventions. After much stalling, the House of Representatives began to consider the proposed rights on August 13, 1789. They made some changes but basically adopted Madison's amendments after 10 days of debate.

The Senate deliberated for 17 days on the 17 amendments passed by the House of Representatives. They took out and changed some rights. After a conference committee of both houses of Congress, both houses agreed and 12 amendments were submitted to the states for ratification.

10. Three quarters of the states had to ratify the Bill of Rights. Since Vermont had been added to the Union, this meant that 11 of the 14 states had to ratify the Bill of Rights. Within six months, nine states ratified the Bill of Rights, although of the 12 amendments submitted for approval, the first and second were rejected. (The rejected amendments were to regulate the number of members of the House of Representatives and a ban on a change of compensation for Congressional members until an election of the representatives had intervened.)

Vermont ratified the Bill of Rights in November 1789, becoming the 10th State to ratify. By mid-1790, Virginia, Massachusetts, Connecticut and Georgia had not ratified. (Actually Massachusetts had ratified the Bill of Rights but had failed to communicate this to the Congress.) The Virginia legislature after a very difficult and long fight finally ratified the Bill of Rights on December 15, 1791. This made the Bill of Rights part of the Constitution. In 1939, Massachusetts joined Connecticut and Georgia to ratify the Bill of Rights on the 150th anniversary of the Constitution!

11. The new Bill of Rights protected the states and people from actions of the federal government, but not from the actions of state governments. The Fourteenth Amendment adopted after the Civil War of 1868 resulted in substantial limits on states' power. Although the Fourteenth Amendment did not directly apply the Bill of Rights to the States, most (but not all) of the rights in the Bill of Rights have been found by the U.S. Supreme Court over the last 65 years to have been incorporated into the Fourteenth Amendment's due process clause.

12. The rights that James Madison proposed to the First Congress were based largely on the declarations of rights contained in

state constitutions, especially from Virginia's. Many of the ideas on where rights come from are based on the thoughts of philosophers like Locke, Rousseau, Aristotle.

FIRST AMENDMENT'S FREEDOM OF SPEECH

Source:

Written by the University of Puget Sound Institute for Citizen Education in the Law.

Objectives:

As a result of this lesson, students will be better able to:

1. Define freedom of speech protected by U.S. Constitution.
2. Describe the different application of free speech rights to students in schools and to citizens in society.
3. Identify a current conflict regarding free speech.

Procedures:

1. Write on the board: "Congress shall make no law...abridging the freedom of speech...." As originally written, the right of free speech and the entire Bill of Rights protected individuals from interference by the U.S. government. Through the Fourteenth Amendment's due process clause, states are prohibited from violating individuals' rights to free speech.

Today, free speech rights apply when there is "state action," and not when there is only private action. This is why students attending private schools do not have any free speech rights in school protected by the U.S. Constitution while students in public schools do have these rights.

2. Ask students what examples of freedom of speech they can think of in school? Students may suggest expressing an opinion in school; writing an article for the school newspaper; wearing some symbol in schools, such as gang clothing, arm band, political button; demonstrating against a school policy; teachers' expressing a viewpoint about school administration or others; school board censorship of certain books.

3. Explain to students that whenever a public school puts a restriction on a student by a rule or by a practice that affects the students' speech, a first amendment right is involved. Whether or not the particular restriction will be lawful depends upon how a court resolves the issue.

So, for example, a student wishes to put an anti-abortion (or political) bumper sticker on the outside of the student's school locker, but the school has a policy that nothing may be put on the outside of school lockers. The school by its regulation is restricting the free speech of students. Does the school have the right to make this restriction?

To resolve this dispute, a court will apply some legal standard or rule. What this lesson will do is examine the rules that a court would use to decide these freedom of speech cases concerning students in public school and citizens in outside society.

4. **Ask students what is meant by speech.** The communication of thoughts and ideas, including the right to receive information. Explain that speech is communicated by: writing, talking, electronic transmission (including computer, video, radio, and television), symbolic acts, art, music (records, tapes, compact discs, live performances).

5. **Because of certain dangers** presented by free speech, not all speech is protected by the U.S. Constitution. Ask students if they can think of examples where speech should not be protected by the Constitution.

Students may suggest "crying fire in a crowded theater," saying such personally insulting words to others that provokes them to fight, saying words that hurt others in their reputation, being obscene, advertising false information, urging others to break the law now, demonstrating in a way that traffic is blocked for a long time. These forms of speech may constitutionally be limited.

Students may also suggest suppressing unpopular ideas or other constitutionally protected forms of speech. The following outline of the law will demonstrate how speech is presently protected by the Constitution as interpreted by the Courts. The U. S. Supreme Court has given courts a series of rules, called "tests," to use when they are asked to decide whether a particular expression of speech should be protected or not.

6. **Lecture and write on the board.** The Supreme Court has ruled that the First Amendment allows the federal and state government to limit and regulate speech by:

1. Putting reasonable **time, place, and manner** restrictions on speech. For example, by restricting large demonstrations near where people live to certain times of the day. This type of limit cannot be related to the content of the speech.

2. **Excluding** certain types of speech from protection under the First Amendment:

    a. **Obscenity**. The Supreme Court has had a difficult time writing a workable rule to define obscenity. Material is obscene if taken as a whole by an average person applying contemporary community standards it appeals to a prurient (lewd) interest in sex; portrays sexual conduct in a patently offensive way; and lacks serious literary, artistic, political or scientific

value. Access by minors to sexually oriented materials can be regulated more than it can be for adults.
b. **Fighting words.** These are expressions that have little social value, are directed as a personal insult, and are likely to cause an immediate violent reaction.
c. **Defamation.** This is false written or spoken words that damage a person's reputation.
d. **Advocacy of illegal action.** This speech urges people to act immediately to break the law and must be likely to produce such illegal behavior.
e. **Commercial speech** gets less protection than other forms of speech. All forms of advertising are commercial speech and the states may regulate and sometimes ban it. This is why false advertising can be regulated.

3. Restricting speech because in occurs in **certain public places**, like outside jails, military bases and utility sub-stations, that have not traditionally been open to the public.

4. **Public Schools** get special treatment. Speech by high school students can be prohibited altogether if it materially and substantially interferes with school activities or with the rights of other students or teachers, or if the school administration can demonstrate reasonable cause to believe that the expression would cause material and substantial interference.

7. **Distribute Handout 1** and ask students to decide whether the speech described is protected or unprotected by the First Amendment. Answers to Handout 1:

a. **Protected**, the speech itself is protected but the government may regulate the time, place and manner of speech. Van Thu has the right to tell his opinion on refugees but his speech may be limited to downtown areas or to residential areas at a later time. The loudness of his speaker system may also be regulated.

b. **Unprotected**, since this is private action and does not involve the federal or state government.

c. This is **protected** speech (symbolic speech) unless this causes a substantial disruption of the educational process. For example, if fights broke out in the hall, or class after class could not go forward because of students' disagreement over the button's message.

d. **Unprotected**, since this is obscene.

e. **Unprotected**, because this is defamation. Students may ask whether or not this is private activity not regulated by the First Amendment. The government is involved because Tom would have the right to use the courts (part of the government) to sue Joan for her false statements. Enforcement of defamation through the courts makes it a government activity.

f. **Protected.** The government may limit the time, place, and manner of the speech. If the Nazi group advocated the immediate harm to Jews and people were responding in a way to harm them, then this would be unprotected speech -- incitement to unlawful activity.

g. **Unprotected**, since states may ban false advertising as part of commercial speech.

h. **Protected.** Newspapers produced away from school with students' resources and on students' time are given protection of the first amendment. (However, if any of the articles contain false information that damage any teacher's reputation, the speech is unprotected defamation.) Student newspapers that are sponsored by the school and written with school resources and support may generally be controlled by the school administration.

8. Define that the rule for judging whether or not a specific work is obscene has three factors: Miller v. California, 413 U.S. 15 (1973).

1. the average person, applying contemporary community standards, would find that the work taken as a whole, appeals to the prurient interest (appealing to a shameful interest in sex, nudity, or excretion)
2. measured by contemporary community standards, the work shows in a patently offensive way, sexual conduct specifically defined by state law, and
3. the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

9. Distribute Handout 2. Ask students to review the law on obscenity and then to decide whether or not they would convict the band members of performing obscene materials. Ask students what they decided.

10. Have the class report back its decisions and let the entire class give their opinions. Inform students that after the judge in Skyywalker Records Inc. v. Navarro had ruled that *As Nasty as They Wanna Be* was obscene, record store owner Charles Freeman was arrested, and then convicted on October 3, 1990, for selling this record. His conviction is now on appeal.

Following this ruling too, the band members were arrested and charged with criminal performance of obscene material. However, the six-person jury deliberated 3 hours on October 20, 1990, to decide they were not guilty because the prosecution had not proved that the performance was obscene, and the performance had artistic value.

Billboard Magazine reports that there are record stores in every state that no longer offer this album, some after being told by police officials to drop the album.

FREE SPEECH

Decide for each situation below whether the speech described is protected or unprotected by the First Amendment. Be sure to give your reasons.

a. Van Thu drives a truck with a loudspeaker in an area where people live at 6 a.m. before people go to work, telling how poorly refugees are treated in this country.

b. Your mother grounds you for two weeks for mouthing off to her.

c. Tom and Tyrone each wear a button to high school with a picture of a Ku Klux Klan hood to protest the civil rights movement.

d. Joe publishes a magazine called "Young Love." The magazine contains very clear photos of children aged 8-12 performing various sex acts.

e. Tom, Joan's supervisor, fires her for being continually late for work.. To get even, Joan tells her co-workers that he fired her because she would not date him.

f. The Neo Nazi Youth Group planned a parade through the streets of Skokie, Illinois so they could advocate the extermination of Jewish people. Most of the people of Skokie are Jewish men and women who were imprisoned in concentration camps in Germany during World War II by the Nazi government.

g. Fat Be Gone Company advertises that its nutrition system will result in a weight loss of 5 pounds per week and that none of this weight will be gained back. In reality, persons on this weight loss program lose from 1 to 2 pounds per week and most regain that weight.

h. Public high school students write an underground newspaper on their own time, with their own resources and distribute the paper at a class picnic. The newspaper has the results of an opinion poll about each teacher. Some of the articles are very critical of the teachers.

2 LIVE CREW'S ALBUM, AS NASTY AS THEY WANNA BE: OBSCENE OR NOT OBSCENE?

The United States Supreme Court has ruled that obscene forms of speech are not protected by the First Amendment. In 1973, the Supreme Court defined what it meant by obscenity. For a work to be obscene, it must meet all three of the following criteria:

1) To the average person, applying contemporary community standards, it must be patently offensive in showing sexual or excretory functions.

2) To the average person, applying contemporary community standards, taken as a whole, it must appeal to the prurient interest (a shameful interest in nudity, sex or excretory functions).

3) Taken as a whole, it must lack serious literary, artistic, political or scientific value.

THE FACTS

The recording *As Nasty As They Wanna Be* was released to the public by 2 Live Crew in 1989. Public sales had totaled over 1.7 million copies by June of 1990. (2 Live Crew has also produced a recording entitled *As Clean As They Wanna Be* which has sold about 250,000 copies during the same time. It contains the same music as *Nasty* but without explicit sexual lyrics.)

The lyrics in this album are filled with references to "dirty words," sexual organs, excretion, very clearly described sexual conduct, violence and female abuse. Judge Jose A. Gonzales, Jr., in South Florida's U.S. District Court, ruled that the recording was legally obscene and therefore not protected by the First Amendment.

The members of the group were then arrested in June 1990 after they performed this album in an adults only nightclub in Florida. They were each charged with performing obscene material.

Directions: Decide for yourselves whether or not the members of 2 Live Crew should be convicted of performing obscenity.

FIFTH AMENDMENT'S RIGHT AGAINST SELF-INCRIMINATION

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law.

Objectives:

As a result of this lesson, students will be better able to:

1. Define, list purposes and historical basis for a right against self-incrimination.
2. Identify the various ways that the right against self-incrimination is presented.
3. Describe the consequences for violations of the right against self-incrimination.
4. Define the Miranda warning requirements and apply them to self-incrimination situations.
5. Identify the role the Courts have played in interpreting this right against self-incrimination.

Procedures:

1. **Ask students to define "incrimination."** Testimony or communication that would give evidence that may lead to criminal conviction, furnish a link in the evidence leading to prosecution, or lead to evidence individuals reasonably believe could be used against them in a criminal case.

2. **Tell students that the source of the right against self-incrimination:** The Fifth Amendment to the U.S. Constitution reads: "No person...shall be compelled in any criminal case to be a witness against himself."

3. **Explain** that if a confession or other evidence is obtained in violation of the right against self-incrimination, the "exclusionary rule" applies. This means that the evidence will generally not be allowed into the criminal trial to find the defendant guilty.

4. **Ask students** to list the Miranda warnings:

1. You have the right to remain silent. Anything you say can and will be used against you in a court of law.
2. You have the right to a lawyer and to have one present while you are being questioned.
3. If you cannot afford a lawyer, one will be appointed for you before any questioning begins.

5. **Distribute Handout 1** to determine how much they know

about the right against self-incrimination.

6. **Have students in small groups** decide, giving reasons, whether the self-incrimination right has been violated.

7. **Tell students** to listen carefully to the answers because their next assignment will be to write out the rules regarding self-incrimination on the cases presented.

Answers to Handout 1:

a. In Porter v. State. 519 So.2d 1230 (1988), a state supreme court ruled that Porter's right was not violated since this right against self-incrimination protects him from being forced to testify about incriminating matters but does not prevent forcing him from giving physical evidence. One reason for this different treatment is that physical evidence unlike a confession cannot be made up or distorted by forcing an individual to give it. Defendant can be made to submit to blood tests, fingerprints, photographs, measurements, writing for identification, to appear in court, to stand, to assume a stance, to walk, or to gesture.

b. In Fowler v. State, 566 So.2d 1194 (1990), a state supreme court ruled that Fowler's rights were not violated. Fowler was given the full Miranda warnings, which he understood. His failure to sign anything without an attorney present shows that he was aware of the seriousness of what was going on. His waiver was voluntary, knowingly and intelligently made.

c. In Jones v. State, 461 So.2d 686 (1984), a state supreme court ruled that Jones's rights were violated. Giving the Miranda warnings does not make every statement admissible. The State must prove beyond a reasonable doubt that the rights were waived--intelligently, knowingly, and voluntarily by evaluating the totality of the circumstances. Jones did properly waive his rights.

However, during questioning by the police while in custody, the accused has the right at any time and in any manner to end or limit the questioning. In this case, Jones showed that he did not wish to speak on whether or not he acted alone, the police are then prohibited from further questioning Jones on that topic, but leaving the police free to explore other unrelated areas.

d. Jones's rights were violated. In Jones v. State, a state supreme court ruled that to start questioning an accused who has used his right to stop the questioning, three things must happen:

(1) There must be a cooling off period. The officers must allow some time to go by before the questioning starts

again. In one case, 2 hours were sufficient, overnight was enough in another case.

(2) There must be a reasonable belief that a suspect has voluntarily changed his/her mind.
(3) New and adequate Miranda warnings must be given.

e. In Tolbert v. State, 511 So.2d 1368 (1987), a state supreme court made it clear that Miranda rights are not necessary where the questioning is investigatory and non-custodial. Here the interrogation is part of the general on-the-scene investigation, and no warnings are required.

Warnings are required only where the accusatory stage has been reached or the interrogation is custodial. The accusatory stage is reached when law enforcement first charges the accused with a crime: when a warrant is issued for arrest or when law enforcement arrest without a warrant. Custodial interrogation occurs when a person is not free to leave and is being questioned by the government.

f. In Glass v. State, 278 So.2d 384 (1973), a state supreme court said there was no violation. Glass's statements to the wife were not a result of custodial interrogation.

g. In In the Interest of W.R.A., 481 So.2d 280 (1985), a state supreme court ruled that this confession was admissible, no violation. Minors have a right against self-incrimination and a right to counsel the same as an adult. The Court in this case found that under the totality of the circumstances, the minor knowingly and intelligently waived his rights and freely and voluntarily consented. Because the youth was 17 years and 4 months and had considerable prior experience with Youth Court, he had the capacity to understand and waive his rights. His mother's consent increased his opportunity to make a knowledgeable and voluntary consent. (The Court noted that his mother may not consent to her son's waiver of rights.)

h. Ernesto Miranda's rights were violated. This is the United States Supreme Court case of Miranda v. Arizona, 384 U.S. 436 (1966), in which the U.S. Supreme Court ruled for the first time that police must provide Miranda warnings to persons who are being subjected to "custodial interrogation." Custodial interrogation means that the individual is not free to leave and is being questioned by the government officers.

8. **After each problem** has been discussed in class, assign students in groups to summarize and report to the class on the rule on self-incrimination that comes from each case.

9. **Pass out Handout 2** and match the answers with what the students have developed.

10. Explain that the Bill of Rights contains a right against self-incrimination because of events in England during the mid-1600's. Up until this time the common practice in church (ecclesiastical) courts of England had been to put a defendant upon his oath and compel a statement from him as to the crimes of which he was accused. However, during the celebrated trials of John Lilburne in the mid-1600's, the judges reluctantly respected the defendant's absolute refusals to testify against himself.

The American colonies borrowed from England's common law of criminal procedure. By the mid-1700's, this right was firmly established throughout the colonies. In 1776, George Mason incorporated a self-incrimination right into the Virginia state constitution, and seven other states shortly did the same. James Madison drafted the fifth amendment to the U.S. Constitution in 1789 and used Virginia and other states' constitutions as his guide.

All the states of the union have written a right against self-incrimination into their state constitutions

11. Ask students what are the purposes of the right against self-incrimination. (1) Protects the integrity of the judicial system in which even the guilty are not be convicted unless the prosecutor does all the work; (2) Protects the individual from being forced into giving a false confession; (3) Protects society by convicting the guilty and not the innocent; (4) Promotes conviction of the guilty by encouraging witnesses to come forward to testify who might refuse out of fear of self-incrimination; (5) Encourages good police work; (6) Serves to preserve that a defendant is innocent until proved guilty.

SELF-INCRIMINATION: CASE STUDIES

Directions: Decide if the right to be free from self-incrimination has been violated in each situation below. Be prepared to give your reasons.

a. Lester Porter chose not to testify at his trial for armed robbery. However, the prosecutor required that he show his hands to the witness who had been robbed. The witness identified a scar on the back of Porter's hand as the same scar on the hand of the masked robber. Porter was convicted. Porter claims that requiring him to show his scar violated his right against self-incrimination.

b. After Jerry Fowler killed a 19 year old man, he called the police. The police gave Fowler the Miranda warning, although he never signed a written waiver. He then told the officers what happened. The officers wrote down what Fowler said, but Fowler refused to sign the statement without having his lawyer present. The statement was used against Fowler who was found guilty of manslaughter. Fowler claims that using the unsigned statement violated his right against self-incrimination.

c. After being informed of his Miranda rights and signing a written waiver of the rights, Gregory Montecarlo Jones made statements to police that showed that he killed his landlady in Biloxi. When questioned by police to admit that he had acted alone, Jones said twice, "I prefer not to speak on that." Police continued to question him, on video tape, and Jones finally admitted he acted alone. This video tape was used in evidence against him, resulting in a conviction of capital murder. Jones claimed that the police's continued questioning of him after he indicated he did not want to speak on that violated his right against self-incrimination.

d. After an accused said he did not want to answer any more questions, officers later decide they want to question the accused again. They wait overnight and then begin to ask questions of the accused in the morning. He gives a statement that is used against him in court. He now claims that the statement given in the morning violates his rights.

e. Police were called to the scene of a shooting. Two police officers arrived and began asking people what happened, and someone shouted "He did it." One officer turned to James Lee Tolbert and asked if he knew anything about what happened. Tolbert said "I shot her." The officer then arrested Tolbert; his statement was used against him at trial. Tolbert now appeals his conviction for murder, claiming that use of his statement, "I shot her," when his Miranda rights were not given violated his right to be free from self-incrimination.

f. During the time that Willie Edd Glass was waiting for his trial for murder, he worked outside the jail mowing the courthouse lawn. Seeing no one around, the wife of the murder victim stopped and asked him if her husband had lived very long after he was shot. The accused told her that he thought he was dead before he left, and he just took the gun and billfold and ran home because he was scared. The wife was called to the stand during Glass's trial to testify about this conversation. Glass claimed that his right against self-incrimination was violated because he was not given his Miranda rights and his lawyer was not present for this questioning.

g. A 17 year old with a long history of court involvement was charged with grand larceny and burglary. After his arrest he was given his Miranda warnings. Police contacted a judge, as required by state law, and got permission to question the minor. His mother was called to the station where she was told of the charges against her son and allowed to talk with him prior to police questioning of her son. She consented to the interrogation, as did her son, in writing. He made a written confession. The son now challenges the use of his statement in court as a violation of his right against self-incrimination.

h. Ernesto was charged with kidnapping and raping an 18-year-old young woman near Phoenix, Arizona. She claimed that a man grabbed her on her way home from work, threw her into the back of a car and raped her. Ten days later Ernesto was arrested, placed in a line-up, and identified by the young woman as her attacker. The police took Ernesto into a room and questioned him for two hours. At the end of the two hours, the officers came out with a written and signed confession. This confession helped convict Ernesto at trial.

Ernesto claimed that he had not been warned of his right to remain silent (or to have an attorney present) even though he did not claim that his confession was false or forced from him. He claimed instead that he would not have confessed if he had been advised of his right to remain silent and of his right to counsel.

RULES ON SELF-INCRIMINATION:

a. The right against self-incrimination prevents forcing a person to give testimony but does not prevent the government from forcing the individual to give physical evidence, for example, blood tests, fingerprints, photographs, measurements, to assume a stance, and to walk.

b. A person who makes an oral statement but refuses to sign it after being given Miranda warnings, and voluntarily, knowingly, and intelligently waiving these rights cannot object to the admission of the confession into trial.

c. Giving the Miranda warnings does not make every statement admissible. The State must prove beyond a reasonable doubt that the rights of which the accused has been warned were waived--intelligently, knowingly, and voluntarily by examining the totality of the circumstances.

An accused has the right at any time and in any manner to end or limit police questioning. When an accused shows that he does not wish to speak on a particular topic police may no longer question him on this topic, but may continue to question the accused on other unrelated areas.

d. To start questioning an accused who has used his right to stop the questioning, three things must happen:

(1) There must be a cooling off period.
(2) There must be a reasonable belief that a suspect has voluntarily changed his/her mind.
(3) New and adequate Miranda warnings must be given.

e. Miranda warnings need not be given where questioning is investigatory and the person is not in custody. Interrogation that is part of a general on-the-scene investigation does not require giving Miranda warnings.

Miranda warnings are required only where the accusatory stage has been reached or the interrogation is custodial. The accusatory stage is reached when law enforcement first charges the accused with a crime: when a warrant is issued for arrest or when law enforcement arrest without a warrant. Custodial interrogation occurs when a person is not free to leave and is being questioned by the government.

f. A suspect in custody who voluntarily gives information in response to a question from a non-government person is not entitled to Miranda warnings.

g. Minors have a right against self-incrimination and a right to counsel the same as an adult. Minors may waive their rights against self-incrimination when they knowingly, voluntarily and intelligently do so. A parent may not consent to a waiver of a child's rights.

h. Police must provide Miranda warnings to persons who are being subjected to "custodial interrogation." Custodial interrogation means that the individual is not free to leave and is being questioned by government officers.